

103^D CONGRESS
2^D SESSION

S. 1834

[Report No. 103-349]

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 25), 1994

Mr. BAUCUS (by request) (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and ordered referred to the Committee on Environment and Public Works for consideration only of matters within that Committee's jurisdiction, provided that if and when reported from the Committee, the bill then be referred to the Committee on Finance for consideration only of matters within that Committee's jurisdiction for a period not to exceed thirty session days

AUGUST 19 (legislative day, AUGUST 18), 1994

Reported by Mr. BAUCUS, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

AUGUST 19 (legislative day, AUGUST 18), 1994

Referred to the Committee on Finance pursuant to the order of February 7, 1994

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) ~~SHORT TITLE.~~—This Act may be cited as the
 3 “Superfund Reform Act of 1994”.

4 (b) ~~TABLE OF CONTENTS.~~—

~~Sec. 1. Short title; table of contents.~~

~~TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH~~

~~Sec. 101. Purposes and objectives.~~
~~Sec. 102. Early, direct and meaningful community participation.~~
~~Sec. 103. Community working groups.~~
~~Sec. 104. Citizen information and access offices.~~
~~Sec. 105. Response to comments.~~
~~Sec. 106. Multiple sources of risk demonstration projects.~~
~~Sec. 107. Assessing risks from multiple sources.~~
~~Sec. 108. Multiple sources of risk in priority setting.~~
~~Sec. 109. Disease registry and medical care providers.~~
~~Sec. 110. Substance profiles.~~
~~Sec. 111. Determining health effects.~~
~~Sec. 112. Public health and related health activities at National Priorities List sites.~~
~~Sec. 113. Health studies.~~
~~Sec. 114. Distribution of materials to health professionals and medical centers.~~
~~Sec. 115. Grant awards/contracts/community assistance activities.~~
~~Sec. 116. Public health recommendations in remedial actions.~~
~~Sec. 117. Agency for Toxic Substances and Disease Registry notification.~~

~~TITLE II—STATE ROLES~~

~~Sec. 201. State authority.~~
~~Sec. 202. Transfer of authorities.~~
~~Sec. 203. State role in determination of remedial action taken.~~
~~Sec. 204. State assurances.~~
~~Sec. 205. Siting.~~
~~Sec. 206. The National Priorities List.~~
~~Sec. 207. The State Registry.~~

~~TITLE III—VOLUNTARY RESPONSE~~

~~Sec. 301. Purposes and objectives.~~
~~Sec. 302. State voluntary response program.~~
~~Sec. 303. Site characterization program.~~

~~TITLE IV—LIABILITY AND ALLOCATION~~

~~Sec. 401. Response authorities.~~
~~Sec. 402. Compliance with administrative orders.~~
~~Sec. 403. Limitations to liability for response costs.~~
~~Sec. 404. Liability.~~
~~Sec. 405. Civil proceedings.~~
~~Sec. 406. Limitations on contribution actions.~~
~~Sec. 407. Scope of rulemaking authority.~~
~~Sec. 408. Enhancement of settlement authorities.~~

Sec. 409. Allocation procedures.

TITLE V—REMEDY SELECTION

Sec. 501. Purposes and objectives.

Sec. 502. Cleanup standards and levels.

Sec. 503. Remedy selection.

Sec. 504. Miscellaneous amendments to section 121.

Sec. 505. Response authorities.

Sec. 506. Removal actions.

Sec. 507. Transition.

TITLE VI—MISCELLANEOUS

Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.

Sec. 602. Transfers of uncontaminated property.

Sec. 603. Agreements to transfer by deed.

Sec. 604. Alternative or innovative treatment technologies.

Sec. 605. Definitions.

Sec. 606. Conforming amendment.

TITLE VII—FUNDING

Sec. 701. Authorizations of appropriations.

Sec. 702. Orphan share funding.

Sec. 703. Agency for Toxic Substances and Disease Registry.

Sec. 704. Limitations on research, development and demonstration programs.

Sec. 705. Authorization of appropriations from general revenues.

Sec. 706. Additional limitations.

TITLE VIII—INSURANCE

Sec. 801. Short title.

Sec. 802. Environmental Insurance Resolution Fund.

Sec. 803. Financial statements, audits, investigations, and inspections.

Sec. 804. Stay of pending litigation.

Sec. 805. Sunset provisions.

Sec. 806. Sovereign immunity of the United States.

Sec. 807. Effective date.

TITLE IX—TAX

Sec. 901. Amendments to the Internal Revenue Code of 1986.

Sec. 902. Environmental fees and assessments on insurance companies.

Sec. 903. Funding provisions for Environmental Insurance Resolution Fund.

Sec. 904. Resolution Fund not subject to tax.

1 TITLE I—COMMUNITY PARTICIPATION

2 AND HUMAN HEALTH

3 SEC. 101. PURPOSES AND ACTIVITIES.

4 The purposes and objectives of the community par-

5 ticipation activities required by this title are to—

1 (a) inform citizens and elected officials at all
 2 levels of government of the existence and status of
 3 facilities listed on the National Priority List and
 4 contaminated sites identified on State Registries (as
 5 established by section 207 of this Act);

6 (b) provide citizens with information regarding
 7 the Superfund identification and cleanup process
 8 and maintain lists of technical, health and other rel-
 9 evant experts licensed or located in the state who are
 10 available to assist the community;

11 (c) ensure wide dissemination of and access to
 12 information in a manner that is easily understood by
 13 the community, considering any unique cultural
 14 needs of the community, including presentation of
 15 information orally and distribution of information in
 16 languages other than English; and

17 (d) ensure that the President is aware of and
 18 considers the views of affected communities.

19 **SEC. 102. EARLY, DIRECT AND MEANINGFUL COMMUNITY**
 20 **PARTICIPATION.**

21 (a) Section 117(c)(1) of the Comprehensive Environ-
 22 mental Response, Compensation, and Liability Act of
 23 1980, referred to in this Act as “the Act” (42 U.S.C.
 24 9617) is amended by amending the first sentence to read
 25 as follows:

1 “(1) ~~AUTHORITY.~~—Subject to such amounts as
2 are provided in appropriations Acts and in accord-
3 ance with rules promulgated by the President, the
4 President may make grants or services available to
5 any group of individuals which may be affected by
6 a release or threatened release of a hazardous sub-
7 stance or pollutant, or contaminant at or from a fa-
8 cility where there is significant response action
9 under this Act including, a site assessment, remedial
10 investigation/feasibility study, or removal or remedial
11 action.”.

12 ~~(b)~~ Section 117(e) of the Act is amended by striking
13 paragraph (2) and inserting in the following:

14 “(2) ~~AMOUNT.~~—The amount of any grants or
15 services may not exceed \$50,000 for a single recipi-
16 ent of grants or services. The President may waive
17 the \$50,000 limitation in any case where such waiv-
18 er is necessary to carry out the purposes of this sub-
19 section. Each recipient of grants or services shall be
20 required, as a condition of the grants or services, to
21 contribute at least 20 percent of the total costs of
22 the technical assistance for which such grants and
23 services are made. The President may waive the 20
24 percent contribution requirement if the grants or
25 services recipient demonstrates financial need, and

1 such waiver is necessary to facilitate public partici-
2 pation in the selection of remedial action at the fa-
3 cility. Not more than one award of grants or serv-
4 ices may be made with respect to a single facility,
5 but the grants or services may be renewed to facili-
6 tate public participation at all stages of remedial ac-
7 tion.”.

8 (c) Section 117 of the Act (42 U.S.C. 9617) is
9 amended by adding after subsection (c) the following new
10 subsections:

11 “(f) ~~EARLY, DIRECT AND MEANINGFUL COMMUNITY~~
12 ~~INVOLVEMENT.~~—The President shall provide for early, di-
13 rect and meaningful community involvement in each sig-
14 nificant phase of response activities taken under this Act.
15 The President shall provide the community with access to
16 information necessary to develop meaningful comments on
17 critical decisions regarding facility characterization, risks
18 posed by the facility, and selection of removal and reme-
19 dial actions. The President shall consider the views, pref-
20 erences and recommendations of the affected community
21 regarding all aspects of the response activities, including
22 the acceptability to the community of achieving back-
23 ground levels.

24 “(g) ~~INFORMATION TO BE DISSEMINATED.~~—In addi-
25 tion to other information the President considers appro-

1 priate, the President shall ensure that the community is
 2 provided information on the following:

3 “(1) the availability of a Technical Assistance
 4 Grant (TAG) under subsection (e), directions on
 5 completing the TAG application, and the details of
 6 the application process;

7 “(2) the possibility (where relevant) that mem-
 8 bers of a community may qualify to receive an alter-
 9 native water supply or relocation assistance;

10 “(3) the Superfund process, and rights of pri-
 11 vate citizens and public interest or community
 12 groups;

13 “(4) the potential for or existence of a Commu-
 14 nity Working Group (CWG) established under sub-
 15 section (i) (as added by the Superfund Reform Act
 16 of 1994); and

17 “(5) an objective description of the facility’s lo-
 18 cation and characteristics, the contaminants present,
 19 the known exposure pathways, and the steps being
 20 taken to assess the risk presented by the facility.

21 “(h) PROCESS FOR INVOLVEMENT.—As early as
 22 practicable after site discovery, the President shall provide
 23 regular, direct, and meaningful community involvement in
 24 all phases of the response activities at the facility, includ-
 25 ing—

1 ~~“(1) SITE ASSESSMENT.—Whenever practicable,~~
 2 ~~during the site assessment, the President shall solicit~~
 3 ~~and evaluate the concerns and interests of the com-~~
 4 ~~munity likely affected by the facility. The evaluation~~
 5 ~~may consist of face-to-face community surveys, a~~
 6 ~~minimum of one public meeting, written responses to~~
 7 ~~significant concerns, and other appropriate~~
 8 ~~participatory activities.~~

9 ~~“(2) REMEDIAL INVESTIGATION/FEASIBILITY~~
 10 ~~STUDY.—During the remedial investigation and fea-~~
 11 ~~sibility study, the President shall solicit the views~~
 12 ~~and preferences of the community on the remedi-~~
 13 ~~ation and disposition of the hazardous substances,~~
 14 ~~pollutants or contaminants at the site. The commu-~~
 15 ~~nity’s views and preferences shall be described in the~~
 16 ~~remedial investigation and feasibility study and con-~~
 17 ~~sidered in the development of remedial alternatives~~
 18 ~~for the facility.”.~~

19 **SEC. 103. COMMUNITY WORKING GROUPS.**

20 Section 117 of the Act (42 U.S.C. 9617) is amended
 21 by adding after subsection (h) (as added by this Act) the
 22 following new subsection:

23 ~~“(i) COMMUNITY WORKING GROUPS.—~~

24 ~~“(1) CREATION AND RESPONSIBILITIES.—The~~
 25 President shall provide the opportunity to establish

1 a representative public forum, known as a Commu-
2 nity Working Group (CWG), to achieve direct, regu-
3 lar and meaningful consultation with community
4 members throughout all stages of a response action.
5 The President shall consult with the CWG at each
6 significant phase of the remedial process.

7 “(2) INFORMATION CLEARINGHOUSE.—The
8 CWG shall serve as a facility information clearing-
9 house for the community. In addition to maintaining
10 records of facility status and lists of active citizen
11 groups and available experts, the CWG shall also be
12 a repository for health assessment information and
13 other related health data.

14 “(3) LAND USE RECOMMENDATIONS.—To es-
15 tablish land use expectations more reliably, and ob-
16 tain greater community support for remedial deci-
17 sions affecting future land use, the President shall
18 consult with the CWG on a regular basis throughout
19 the remedy selection process regarding reasonably
20 anticipated future use of land at the facility. The
21 CWG may offer recommendations to the President
22 at any time during the response activities at the fa-
23 cility on the reasonably anticipated future use of
24 land at the facility, taking into account development
25 possibilities and future waste management needs.

1 The President shall not be bound by any rec-
2 ommendation of the CWG. However, when the CWG
3 achieves substantial agreement on the reasonably
4 anticipated future use of the land at the facility, the
5 President shall give substantial weight to that rec-
6 ommendation. In cases where there is substantive
7 disagreement within the CWG over a recommenda-
8 tion regarding the reasonably anticipated future use
9 of land at the facility, the President shall seek to
10 reconcile the differences. In the event of continued
11 substantive disagreement, substantial weight shall be
12 given to the views of the residents of the affected
13 community. Should the President make a determina-
14 tion that is inconsistent with a CWG recommenda-
15 tion on the reasonably anticipated future use of land
16 at the facility, the President shall issue a written
17 reason for the inconsistency.

18 “(4) MEMBERS.—CWG membership shall not
19 exceed twenty persons. CWG members shall serve
20 without pay. Nominations for CWG membership
21 shall be solicited and accepted by the President. Se-
22 lection of CWG members shall be made by the Presi-
23 dent. In selecting citizen participants for the CWG,
24 the President shall provide notice and an oppor-
25 tunity to participate in CWGs to persons who poten-

1 tially are affected by facility contamination in the
2 community. Special efforts shall be made to ensure
3 that the composition of CWGs reflects a balanced
4 representation of all those interested in facility re-
5 mediation. In general, it shall be appropriate for the
6 President to offer members of the following groups
7 representation on a CWG—

8 “(A) Residents and/or landowners who live
9 on or have property immediately adjacent to or
10 near the facility, or who may be directly af-
11 fected by releases from the facility, with a mini-
12 mum of one representative of the recipient a
13 grant for technical assistance, if any, awarded
14 under subsection (e);

15 “(B) Persons who, although not physically
16 as close to the facility as those in the group
17 identified in subparagraph (A), may be poten-
18 tially affected by releases from the facility;

19 “(C) Members of the local medical commu-
20 nity who have resided in the community for at
21 least five years;

22 “(D) Representatives of Indian tribes;

23 “(E) Representatives of citizen, environ-
24 mental or public interest groups with members
25 residing in the community;

1 “(F) Local government officials;

2 “(G) Workers at the facility who will be in-
3 volved in actual cleanup operations;

4 “(H) Persons at the facility during re-
5 sponse actions;

6 “(I) Facility owners and the significant
7 PRPs who, whenever practicable, represent a
8 balance of interests; and,

9 “(J) Members of the local business com-
10 munity.

11 “(5) OTHER COMMUNITY VIEWS.—The exist-
12 ence of a CWG shall not affect or diminish any
13 other obligation of the President to consider the
14 views of any person in selecting response actions
15 under this Act.”.

16 **SEC. 104. CITIZEN INFORMATION AND ACCESS OFFICES.**

17 Section 117 of the Act (42 U.S.C. 9617) is amended
18 by adding after subsection (i) (as added by this Act) the
19 following new subsection:

20 “(j) CITIZEN INFORMATION AND ACCESS OFFICES.—

21 “(1) CREATION AND RESPONSIBILITIES.—The
22 Administrator shall ensure that an independent Citi-
23 zen Information and Access Office (CIAO) is estab-
24 lished in each state and on each tribal land affected
25 by a National Priorities List facility.

1 ~~“(2) PRIMARY FUNCTIONS.—~~The primary func-
 2 tions of each CIAO shall be to—

3 ~~“(A) inform citizens and elected officials at~~
 4 all levels of government of the existence and
 5 status of National Priorities List facilities in
 6 the state;

7 ~~“(B) provide citizens with information~~
 8 about each phase of the Superfund process, in-
 9 cluding the site identification, assessment and
 10 cleanup phases;

11 ~~“(C) ensure wide distribution of informa-~~
 12 tion that is easily understood by citizens;

13 ~~“(D) serve as a state-wide, or tribal land-~~
 14 wide clearinghouse of information; and

15 ~~“(E) assist in the Administrator’s efforts~~
 16 to notify, nominate, and select potential Com-
 17 munity Working Group members.”.

18 **SEC. 105. RESPONSE TO COMMENTS.**

19 Section 117(a) ~~(42 U.S.C. 9617(a))~~ of the Act is
 20 amended by striking “both of” from the phrase imme-
 21 diately preceding paragraph (1) and by inserting after
 22 paragraph (2) the following new paragraph:

23 ~~“(3) Consider the recommendations of any~~
 24 Community Working Group, community members
 25 and Technical Assistance Grant recipients estab-

1 lished for the facility pursuant to this section. Pro-
 2 vide, in writing a response to each significant com-
 3 ment received during the public comment period.
 4 The written response shall include an explanation of
 5 how the lead agency has used or rejected significant
 6 comments of the Community Working Group in its
 7 final decision.”.

8 **SEC. 106. MULTIPLE SOURCES OF RISK DEMONSTRATION**
 9 **PROJECTS.**

10 Section 117 of the Act (42 U.S.C. 9617) is amended
 11 by adding after subsection (j) (as added by this Act) the
 12 following new subsection:

13 “(k) MULTIPLE SOURCES OF RISK DEMONSTRATION
 14 PROJECTS.—

15 “(1) IN GENERAL.—The Administrator shall se-
 16 lect at least 10 demonstration projects to be imple-
 17 mented over a five year period, relating to the iden-
 18 tification, assessment, management of, and response
 19 to, multiple sources of risk in and around designated
 20 facilities. These demonstration projects will examine
 21 various approaches to protect communities exposed
 22 to such multiple sources of risk. The Administrator
 23 shall promulgate regulations that set forth the cri-
 24 teria by which demonstration projects will be se-
 25 lected.

1 “(2) ~~ADDITIONAL HEALTH BENEFITS.~~—In the
2 course of conducting these demonstration projects, if
3 a distinct pattern of adverse health effects is identi-
4 fied in the surrounding community, the Adminis-
5 trator shall consider the provision of additional
6 health benefits to the affected community, in an ef-
7 fort to improve community health and welfare. Addi-
8 tional benefits may include services such as consulta-
9 tions on health information and health screening,
10 the kind and availability of which will be set forth
11 in regulations promulgated by the Administrator.
12 These benefits shall not duplicate any activities al-
13 ready undertaken at those facilities by the Agency
14 for Toxic Substances and Disease Registry under
15 section 104(i) of this Act.

16 “(3) ~~MULTIPLE SOURCES OF RISK.~~—For the
17 purposes of this section, the term “multiple sources
18 of risk” means—

19 “(A) health risks from the existence of and
20 exposure to hazardous substances in the vicinity
21 of a facility for which a response action under
22 this Act is considered, which may present risks
23 to persons who are also at risk due to condi-
24 tions at such a facility; or

1 “(B) health risks from releases or threat-
 2 ened releases of a hazardous substance, pollut-
 3 ant or contaminant from facilities, permitted or
 4 otherwise, in the vicinity of a facility for which
 5 a response action under this Act is being con-
 6 sidered, which may present risks to persons who
 7 are also at risk due to the specific facility for
 8 which a response action is being considered.

9 “(4) ~~CONSISTENCY WITH DESIGNATION OF~~
 10 ~~EMPOWERMENT ZONES.~~—The Administrator shall,
 11 to the maximum extent practicable, select locations
 12 for conducting demonstration projects under this
 13 subsection that coincide with areas which have been
 14 identified as empowerment zones under the Omnibus
 15 Budget Reconciliation Act of 1994 (Public Law
 16 103–66).

17 “(5) ~~RIGHT TO PETITION.~~—Any person may
 18 petition the Administrator to conduct a demonstra-
 19 tion project under this subsection at a specified loca-
 20 tion. Without regard to paragraph (4), the Adminis-
 21 trator may grant such a petition if—

22 “(A) the petition sets out a reasonable
 23 basis in fact that the population residing in the
 24 vicinity of the specified location may be exposed

1 to multiple sources of risk as described in para-
 2 graph (3) and;

3 “(B) the petition otherwise meets the re-
 4 quirements of regulations promulgated by the
 5 Administrator which set forth the criteria by
 6 which demonstration projects will be selected.

7 “(6) ~~REVIEWS OF PETITIONS.~~—The Adminis-
 8 trator’s determinations and reviews of petitions
 9 under this subsection are committed to the Adminis-
 10 trator’s unreviewable discretion.

11 “(7) ~~INTERAGENCY COORDINATION.~~—The Ad-
 12 ministrator shall coordinate with other departments
 13 or agencies as necessary in carrying out the respon-
 14 sibilities of this subsection.”.

15 **SEC. 107. ASSESSING RISKS FROM MULTIPLE SOURCES.**

16 Section 105(a) of the Act (42 U.S.C. 9605(a)) is
 17 amended by adding after paragraph (10) the following
 18 new paragraph:

19 “(11) standards and procedures for assessing
 20 the risks, and the cumulative impact of such risks,
 21 posed by the release or threatened release of hazard-
 22 ous substances, or pollutants, or contaminants from
 23 multiple sources of risk (as described in section
 24 117(l)(3) of this Act) in and around a facility, for
 25 utilization in response actions authorized by this

1 Act. The demonstration projects authorized under
 2 subsection 117(l) of this Act shall be used to help
 3 meet the requirements of this subsection.”.

4 **SEC. 108. MULTIPLE SOURCES OF RISK IN PRIORITY SET-**
 5 **TING.**

6 Section 105(a)(8)(A) of the Act (42 U.S.C.
 7 9605(a)(8)(A)) is amended by adding in the last sentence
 8 before “and other appropriate factors” the following “the
 9 presence of multiple sources of risk (described in section
 10 117(l)(3) of this Act) to affected communities.”.

11 **SEC. 109. DISEASE REGISTRY AND MEDICAL CARE PROVID-**
 12 **ERS.**

13 Section 104(i)(1) of the Act (42 U.S.C. 9604(i)(1))
 14 is amended:

15 (a) by amending subparagraph (A) to read as
 16 follows:

17 “(A) in cooperation with the States, for sci-
 18 entific purposes and public health purposes, estab-
 19 lish and maintain a national registry of persons ex-
 20 posed to toxic substances;” and

21 (b) by amending subparagraph (E) by striking
 22 “admissions to hospitals and other facilities and
 23 services operated or provided by the Public Health
 24 Service” and by inserting “referral to accredited
 25 medical care providers”.

1 **SEC. 110. SUBSTANCE PROFILES.**

2 Section 104(i)(3) of the Act (42 U.S.C. 9604(i)(3))
3 is amended by amending the paragraph beginning “Any
4 toxicological profile or revision thereof” to read as follows:
5 “Any toxicological profile or revision thereof shall reflect
6 the Administrator of ATSDR’s assessment of all relevant
7 toxicological testing which has been peer reviewed. The
8 profiles prepared under this paragraph shall be for those
9 substances highest on the list of priorities under para-
10 graph (2) for which profiles have not previously been pre-
11 pared or for substances not on the listing but which have
12 been found at non-National Priorities List facilities and
13 which have been determined by ATSDR to be of critical
14 health concern. Profiles required under this paragraph
15 shall be revised and republished as necessary, based on
16 scientific need. Such profiles shall be provided to the
17 States and made available to other interested parties.”.

18 **SEC. 111. DETERMINING HEALTH EFFECTS.**

19 Section 104(i)(5) of the Act (42 U.S.C. 9604(i)(5))
20 is amended—

21 (a) in subparagraph (A) by—

22 (1) striking “designed to determine the
23 health effects (and techniques for development
24 of methods to determine such health effects) of
25 such substance” and inserting “conducted di-
26 rectly or by means such as cooperative agree-

ments and grants with appropriate public and nonprofit institutions. The research shall be designed to determine the health effects (and techniques for development of methods to determine such health effects) of the substance”; and

(2) redesignating clause (iv) as “(v)”, striking “and” after clause (iii), and by inserting a new clause (iv) to read as follows:

“(iv) laboratory and other studies which can lead to the development of innovative techniques for predicting organ-specific, site-specific, and system-specific acute and chronic toxicity; and”; and

(b) striking subparagraph (D).

SEC. 112. PUBLIC HEALTH AND RELATED HEALTH ACTIVITIES AT NPL FACILITIES.

Section 104(i)(6) of the Act (42 U.S.C. 9604(i)(6)) is amended by—

(a) amending subparagraph (A) to read as follows:

“(A) The Administrator of ATSDR shall perform a public health assessment or related health activity for each facility on the National Priorities List established under section 105 of this Act. The public health assessment or related health activity shall be completed for each facility

1 proposed for inclusion on the National Priorities List not
2 later than one year after the date of proposal for inclusion,
3 including those facilities owned by any department, agen-
4 cy, or instrumentality of the United States.”; and

5 (b) in subparagraph (H), striking “health as-
6 sessment” and “such assessment” each place that
7 they appear and inserting “public health assessment
8 or related health activity”.

9 **SEC. 113. HEALTH STUDIES.**

10 Section 104(i)(7)(A) of the Act (42 U.S.C.
11 9604(i)(7)(A)) is amended to read as follows:

12 “(A) Whenever in the judgment of the Administrator
13 of ATSDR it is appropriate on the basis of the results
14 of a public health assessment or on the basis of other ap-
15 propriate information, the Administrator of ATSDR shall
16 conduct a human health study of exposure or other health
17 effects for selected groups or individuals in order to deter-
18 mine the desirability of conducting full scale epidemiologic
19 or other health studies of the entire exposed population.”.

20 **SEC. 114. DISTRIBUTION OF MATERIALS TO HEALTH PRO-**
21 **FESSIONALS AND MEDICAL CENTERS.**

22 Section 104(i)(14) of the Act (42 U.S.C. 9604(i)(14))
23 is amended to read as follows:

1 “(14) In implementing this subsection and other
2 health-related provisions of this Act in cooperation with
3 the States, the Administrator of ATSDR shall—

4 “(A) assemble, develop as necessary, and dis-
5 tribute to the States, medical colleges, physicians,
6 nursing institutions, nurses, and other health profes-
7 sionals and medical centers, appropriate educational
8 materials (including short courses) on the medical
9 surveillance, screening, and methods of prevention,
10 diagnosis and treatment of injury or disease related
11 to exposure to hazardous substances (giving priority
12 to those listed in paragraph (2)), through means the
13 Administrator of ATSDR considers appropriate; and
14 “(B) assemble, develop as necessary, and dis-
15 tribute to the general public and to at-risk popu-
16 lations appropriate educational materials and other
17 information on human health effects of hazardous
18 substances.”.

19 **SEC. 115. GRANT AWARDS/CONTRACTS/COMMUNITY ASSIST-**
20 **ANCE ACTIVITIES.**

21 Section 104(i)(15) of the Act (42 U.S.C. 6904(i)(15))
22 is amended by—

23 (a) inserting “(A)” before “The activities”;
24 (b) striking “cooperative agreements with
25 States (or political subdivisions thereof)” and insert-

1 ing “grants, cooperative agreements, or contracts
 2 with States (or political subdivisions thereof), other
 3 appropriate public authorities, public or private in-
 4 stitutions, colleges, and universities, and professional
 5 associations,”;

6 (c) in the second sentence, inserting “public”
 7 before “health assessments”; and

8 (d) adding a new subparagraph as follows:

9 “(B) When a public health assessment or related
 10 health activity is conducted at a facility on, or a release
 11 being evaluated for inclusion on the National Priorities
 12 List, the Administrator of ATSDR may provide the assist-
 13 ance specified in this paragraph to public or private non-
 14 profit entities, individuals, and community-based groups
 15 who may be affected by the release or threatened release
 16 of hazardous substances in the environment.”.

17 **SEC. 116. PUBLIC HEALTH RECOMMENDATIONS IN REME-**
 18 **DIAL ACTIONS.**

19 Section 121(c) of the Act (42 U.S.C. 9621(c)) is
 20 amended by inserting after the phrase “remedial action”
 21 the second time it appears the following: “, including pub-
 22 lie health recommendations and decisions resulting from
 23 activities under section 104(i),”.

1 **SEC. 117. ATSDR NOTIFICATION.**

2 Section 122 of the Act (42 U.S.C. 9622) is amended
3 by inserting after subsection (m) the following new sub-
4 section:

5 “(n) NOTIFICATION OF ATSDR.—When the Agency
6 for Toxic Substances and Disease Registry (ATSDR) has
7 conducted health related response activities pursuant to
8 section 104(i) in response to a release or threatened re-
9 lease of any hazardous substance that is the subject of
10 negotiations under this section, the President shall notify
11 ATSDR of the negotiations and shall encourage the par-
12 ticipation of ATSDR in the negotiations.”.

13 **TITLE II—STATE ROLES**

14 **SEC. 201. STATE AUTHORITY.**

15 (a) Title I of the Act (42 U.S.C. 9600 et seq.) is
16 amended by adding after section 126 the following new
17 section:

18 **“SEC. 127. STATE AUTHORITY.**

19 “(a) STATE PROGRAM AUTHORIZATION.—

20 “(1) IN GENERAL.—At any time after the pro-
21 mulgation of the criteria required by paragraph (3)
22 of this subsection, a State may apply to the Admin-
23 istrator to carry out, under its own legal authorities,
24 response actions and enforcement activities at all fa-
25 cilities listed or proposed for listing on the National
26 Priorities List, or certain categories of facilities list-

1 ed or proposed for listing on the National Priorities
2 List, within the State. This section shall not apply
3 to any facility owned or operated by a department,
4 agency, or instrumentality of the United States list-
5 ed on the National Priorities List if, on the date of
6 enactment of the Superfund Reform Act of 1994, an
7 interagency agreement for such facility has been en-
8 tered into pursuant to section 120(a)(2).

9 “(2) REQUIREMENTS FOR AUTHORIZATION.—If
10 the Administrator determines that the State pos-
11 sesses the legal authority, technical capability, and
12 resources necessary to conduct response actions and
13 enforcement activities in a manner that is substan-
14 tially consistent with this Act and the National Con-
15 tingency Plan at the facilities listed or proposed for
16 listing on the National Priorities List for which it
17 seeks authorization, the Administrator, pursuant to
18 a contract or agreement entered into between the
19 Administrator and the State, may authorize the
20 State to assume the responsibilities established
21 under this Act at all such facilities or categories of
22 facilities. Except as otherwise provided in this Act,
23 such responsibilities include, but are not limited to,
24 responding to a release or threatened release of a
25 hazardous substance or pollutant or contaminant;

1 selecting response actions; expending the Fund in
2 amounts authorized by the Administrator to finance
3 response activities; and taking enforcement actions,
4 including cost recovery actions to recover Fund ex-
5 penditures made by the State. In an application for
6 authorization, a State shall acknowledge its respon-
7 sibility to address all response actions at the facili-
8 ties for which it seeks authorization.

9 “(3) PROMULGATION OF REGULATIONS.—The
10 Administrator shall issue regulations to determine a
11 State’s eligibility for authorization and establish a
12 process and criteria for withdrawal of such an au-
13 thorization. At a minimum, a State must dem-
14 onstrate—

15 “(A) that it has a process for allocating li-
16 ability among potentially responsible parties
17 that is substantially consistent with section
18 122a of this Act (as added by the Superfund
19 Reform Act of 1994);

20 “(B) that it provides for public participa-
21 tion in a manner that is substantially consistent
22 with section 117 of this Act and the National
23 Contingency Plan;

24 “(C) that it provides for selection and con-
25 duct of response actions in a manner that is

1 substantially consistent with section 121 of this
2 Act; and

3 “(D) that it provides for notification of
4 and coordination with trustees in a manner that
5 is substantially consistent with section
6 104(b)(2) and section 122(j)(1) of this Act.

7 “(b) REFERRAL OF RESPONSIBILITIES.—

8 “(1) IN GENERAL.—At any time after the pro-
9 mulgation of the criteria required by paragraph (3)
10 of this subsection, a State may apply to the Admin-
11 istrator to carry out, under its own legal authorities,
12 response actions at a specific facility or facilities list-
13 ed or proposed for listing on the National Priorities
14 List, within the State.

15 “(2) REQUIREMENTS FOR REFERRAL.—If the
16 Administrator determines that the State possesses
17 the legal authority, technical capability, and re-
18 sources necessary to conduct response actions and
19 enforcement activities in a manner substantially con-
20 sistent with this Act and the National Contingency
21 Plan at the facilities listed or proposed for listing on
22 the National Priorities List facilities for which it
23 seeks referral, the Administrator, pursuant to a con-
24 tract or agreement entered into between the Admin-
25 istrator and the State, may refer the responsibilities

1 established under this Act to the State for the facili-
2 ties for which the State seeks referral. Except as
3 otherwise provided in this Act, such responsibilities
4 include, but are not limited to, responding to a re-
5 lease or threatened release of a hazardous substance
6 or pollutant or contaminant; selecting response ac-
7 tions; expending the Fund in amounts authorized by
8 the Administrator to finance response activities; and
9 taking enforcement actions, including cost recovery
10 actions to recover Fund expenditures made by the
11 State.

12 “(3) PROMULGATION OF REGULATIONS.—The
13 Administrator shall promulgate regulations to deter-
14 mine a State’s eligibility for referral and establish a
15 process and criteria for withdrawal of such referral.
16 At a minimum, a State must demonstrate that it
17 meets the requirements described in subsection
18 (a)(3).

19 “(c) AUTHORIZED USE OF FUND.—At facilities listed
20 on the National Priorities List for which a State is author-
21 ized under subsection (a), and at facilities listed on the
22 National Priorities List which are referred to a State
23 under subsection (b), the State shall be eligible for re-
24 sponse action financing from the Fund. The Administrator
25 shall ensure that all allocations of the Fund to the States

1 for the purpose of undertaking site-specific response ac-
2 tions are based primarily on the relative risks to human
3 health and the environment posed by the facilities eligible
4 for funding. The amount of Fund financing for a State-
5 selected response action at a facility listed on the National
6 Priorities List shall—

7 “(1) take into account the number and financial
8 viability of parties identified as potentially liable for
9 response costs at such facility; and

10 “(2) be limited to the amount necessary to
11 achieve a level of response that is not more stringent
12 than that required under this Act.

13 A State also may obtain Fund financing to develop and
14 enhance its capacity to undertake response actions and en-
15 forcement activities. The Administrator shall establish
16 specific criteria for allocating expenditures from the Fund
17 among States for the purposes of undertaking response
18 actions and enforcement activities at referred and State-
19 authorized facilities; and building state capacities to un-
20 dertake such response actions and enforcement activities.
21 The Administrator shall develop a program and provide
22 an appropriate level of Fund financing to assist Indian
23 tribes in developing and enhancing their capabilities to
24 conduct response actions and enforcement activities.

1 “(d) STATE COST SHARE.—As provided in section
2 104(c)(3)(B) of this Act (as added by the Superfund Re-
3 form Act of 1994), a State shall pay or assure payment
4 of 15 percent of the costs of all response actions and pro-
5 gram support or other costs for which the State receives
6 funds from the Fund under this section. An Indian tribe
7 authorized to conduct a response actions and enforcement
8 activities or to which facilities have been referred under
9 this section is not subject to the cost-share requirement
10 of this subsection.

11 “(e) TERMS AND CONDITIONS; COST RECOVERY.—A
12 contract or agreement for a State authorization or referral
13 under this section is subject to such terms and conditions
14 as the Administrator prescribes. The terms and conditions
15 shall include requirements for periodic auditing and re-
16 porting of State expenditures from the Fund. The contract
17 or agreement may cover a specific facility, a category of
18 facilities, or all facilities listed or proposed to be listed on
19 the National Priorities List in the State. The contract or
20 agreement shall require the State to seek cost recovery,
21 as contemplated by this Act, of all expenditures from the
22 Fund. Five percent of the monies recovered by the State
23 may be retained by the State for use in its hazardous sub-
24 stance response program, and the remainder shall be re-
25 turned to the Fund. Before making further allocations

1 from the Fund to any State, the Administrator shall take
2 into consideration the effectiveness of the State's enforce-
3 ment program and cost recovery efforts.

4 “(f) ENFORCEMENT OF AGREEMENTS.—If the Ad-
5 ministrator enters into a contract or agreement with a
6 State pursuant to this section, and the State fails to com-
7 ply with any terms and conditions of the contract or agree-
8 ment, the Administrator, after providing sixty days notice,
9 may withdraw the State authorization or referral, or seek
10 in the appropriate Federal district court to enforce the
11 contract or agreement to recover any funds advanced or
12 any costs incurred because of the breach of the contract
13 or agreement by the State.

14 “(g) MORE STRINGENT STATE STANDARDS.—Under
15 either an authorization or referral, a State may select a
16 response action that achieves a level of cleanup that is
17 more stringent than required under section 121(d) of this
18 Act if the State agrees to pay for the incremental increase
19 in response cost attributable to achieving the more strin-
20 gent cleanup level. Neither the Fund nor any party liable
21 for response costs shall incur costs in excess of those nec-
22 essary to achieve a level of cleanup required under section
23 121(d) of this Act.

24 “(h) OPPORTUNITY FOR PUBLIC COMMENT.—The Ad-
25 ministrator shall make available, for public review and

1 comment, applications for authorization under subsection
2 (a) and applications for referral under subsection (b). The
3 Administrator shall not approve or withdraw authorization
4 or referral from a State unless the Administrator notifies
5 the State, and makes public, in writing, the reasons for
6 such approval or withdrawal.

7 “(i) PERIODIC REVIEW OF AUTHORIZED STATE PRO-
8 GRAMS AND REFERRALS.—The Administrator shall con-
9 duct a periodic review of authorized State programs and
10 referrals to determine, among other things, whether—

11 “(1) the response actions were selected and con-
12 ducted in a manner that was substantially consistent
13 with this Act, the National Contingency Plan, and
14 the contract or agreement between the Adminis-
15 trator and the State;

16 “(2) the State response costs financed by Fund
17 expenditures were incurred in the manner agreed to
18 by the State, in accordance with the contract or
19 agreement between the Administrator and the State;
20 and

21 “(3) the State’s cost recovery efforts and other
22 enforcement efforts were conducted in accordance
23 with the contract or agreement between the Admin-
24 istrator and the State.

1 The Administrator, in consultation with the States, shall
2 develop specific criteria for periodic reviews of authorized
3 State programs and referrals. The Administrator shall es-
4 tablish a mechanism to make the periodic State reviews
5 available to the public.

6 “(j) MODIFICATION OF RESPONSE.—At a facility for
7 which a State selects a response action under an author-
8 ization or a referral, the State shall afford the opportunity
9 for public participation in a manner that is substantially
10 consistent with the requirements of section 117(f)—(i) of
11 this Act, and shall give notice of and a copy of the pro-
12 posed plan for response action to the Administrator. The
13 State also shall give prompt written notice and a copy of
14 the final decision in selecting the response action to the
15 Administrator. Within 90 days from the date of receipt
16 of such notice and final response action decision from the
17 State, the Administrator may issue a notice of a request
18 to modify the State-selected remedy. The Administrator’s
19 notice shall be in writing and shall set forth the basis for
20 the Administrator’s position, and the final date for re-
21 sponding to the Administrator’s request, which shall be
22 no less than 90 days from the date of the notice. If the
23 State’s response does not resolve the Administrator’s con-
24 cerns to the Administrator’s satisfaction, the Adminis-
25 trator may withhold the distribution of Fund monies for

1 the selected response action or may withdraw all or part
 2 of the State's authorization or referral.

3 “(k) EFFECT OF SECTION.—The President shall re-
 4 tain the authority to take response actions at facilities list-
 5 ed or proposed for listing on the National Priorities List
 6 that are not being addressed by a State under an author-
 7 ization or referral pursuant to this section. At facilities
 8 listed or proposed for listing on the National Priorities
 9 List that are being addressed by a State under either an
 10 authorization or a referral, the President may take re-
 11 sponse actions that the President determines necessary to
 12 protect human health or the environment, if the State
 13 fails, after a request by the Administrator to take such
 14 response actions in a timely manner. A State does not
 15 have the authority, except pursuant to this section, to take
 16 or order a response action, or any other action relating
 17 to releases or threatened releases, at any facility listed or
 18 proposed for listing on the National Priorities List. This
 19 section does not affect the authority of the United States
 20 under this Act to seek cost recovery for costs incurred by
 21 the United States.”.

22 (b) TRANSITION AND CONFORMING AMENDMENTS.—

23 (1) Sections 104(c)(5), 104(c)(7), 104(d)(1)
 24 and 104(d)(2) of the Act are each amended by in-
 25 serting after the heading in each paragraph the fol-

1 lowing—“This paragraph applies only to response
 2 actions for which a Record of Decision or other deci-
 3 sion document is signed before the date of enact-
 4 ment of the Superfund Reform Act of 1994 and re-
 5 sponse actions covered by a contract or agreement
 6 for which a State has selected, pursuant to the op-
 7 tion provided in subsection (c)(3)(C) (as added by
 8 the Superfund Reform Act of 1994), the funding re-
 9 quirements set forth in subsection (c)(3)(A) (as
 10 amended by Superfund Reform Act of 1994).”;

11 (2) Section 114(a) of the Act is amended by
 12 striking “Nothing” and inserting “Except as other-
 13 wise provided in this Act, nothing”;

14 (3) Section 121(f)(1) of the Act is amended by
 15 striking the existing provisions and inserting “The
 16 President may repeal, no earlier than one year after
 17 the promulgation of final regulations under sections
 18 127(a)(3) and 127(b)(3), the regulations issued
 19 under this paragraph prior to the date of enactment
 20 of the Superfund Reform Act of 1994.”;

21 (4) Section 121(f)(2) of the Act is amended
 22 by—

23 (A) striking “legally applicable or relevant
 24 and appropriate” from the second sentence of
 25 subparagraph (A); and

1 (B) striking “subsection (d)(4)” from the
 2 second sentence of subparagraph (A) and in-
 3 serting “subsection (d)(5)(C)”;

4 (5) Section 121(f)(3) of the Act is amended
 5 by—

6 (A) striking “legally applicable or relevant
 7 and appropriate” from the second sentence of
 8 subparagraph (A); and

9 (B) striking “subsection (d)(4)” from the
 10 second sentence of subparagraph (A) and in-
 11 serting “subsection (d)(5)(C)”;

12 (6) Section 302(d) of the Act is amended by
 13 striking “Nothing” and inserting “Except as other-
 14 wise provided in this Act, nothing”.

15 **SEC. 202. TRANSFER OF AUTHORITIES.**

16 Section 120(g) of the Act (42 U.S.C. 9620(g)) is
 17 amended by adding, after “the Environmental Protection
 18 Agency,” the phrase “and except as provided in section
 19 127,”.

20 **SEC. 203. STATE ROLE IN DETERMINATION OF REMEDIAL**
 21 **ACTION TAKEN.**

22 Section 120(h)(3) of the Act (42 U.S.C. 9620(h)(3))
 23 is amended by adding at the end thereof the following:
 24 “If the property being transferred is part of a facility sub-
 25 ject to a State authorization or a referral under section

1 127, all demonstrations required by this paragraph to be
 2 made to the Administrator shall be made to the appro-
 3 priate State official.”.

4 **SEC. 204. STATE ASSURANCES.**

5 Section 104(c)(3) of the Act (42 U.S.C. 9604(c)(3))
 6 is amended by—

7 (a) in the beginning of the paragraph after
 8 “(3)” inserting “State cost shares for response ac-
 9 tions and programs for which Superfund funds may
 10 be allocated under this section or section 127 shall
 11 be as follows—”;

12 (b) striking “The” before “President” and in-
 13 serting “(A) For all remedial actions for which a
 14 Record of Decision is signed before the date of en-
 15 actment of the Superfund Reform Act of 1994, the”;

16 (c) redesignating subparagraphs (A), (B) and
 17 (C) of existing section 104(c)(3) as subparagraphs
 18 (1), (2) and (3) respectively; by striking “(i)”, wher-
 19 ever it appears and inserting “(I)”; and striking
 20 “(ii)” wherever it appears and inserting “(II)”;

21 (d) adding a new subparagraph (B) as fol-
 22 lows—

23 “(B) Subject to the provisions of subparagraph (C),
 24 for the costs of all response actions for which a Record
 25 of Decision or other decision document is signed after the

1 date that is one year after the effective date of final regu-
 2 lations promulgated under section 127(a)(3) and section
 3 127(b)(3); and for all program or other costs for which
 4 Fund money may be allocated to the State pursuant to
 5 this section or section 127, the President shall not provide
 6 or authorize funding from the Fund unless the State first
 7 enters into a contract or agreement with the President
 8 providing assurances deemed adequate by the President
 9 that the State will pay or assure payment of 15 percentum
 10 of all such costs as required by section 127(d). The Ad-
 11 ministrator may provide funding authorized under this
 12 paragraph for a one-year or other period for all costs and
 13 facilities in a State; in that event, the State cost share
 14 requirement set forth above shall apply to all costs covered
 15 by such period.”; and

16 (e) adding a new subparagraph (C) as follows:

17 “(C) Each State shall have the option of receiving
 18 funding for all response action costs and program or other
 19 costs for which funding is authorized under this section
 20 or section 127 pursuant to either subparagraph (A) or
 21 subparagraph (B) of this paragraph. The option selected
 22 by the State shall apply to all contracts and agreements
 23 signed pursuant to this section or section 127.”.

1 **SEC. 205. SITING.**

2 Section 104(c)(9) of the Act (42 U.S.C. 9604(c)(9))
3 is amended to read as follows:

4 “(9) SITING.—Effective one year after the date of en-
5 actment of the Superfund Reform Act of 1994, the Presi-
6 dent shall not provide any remedial actions pursuant to
7 this section unless the State in which the release occurs
8 submits a report describing its plans for adequate disposal
9 capacity for hazardous wastes, in accordance with guide-
10 lines issued by the Administrator.”.

11 **SEC. 206. THE NATIONAL PRIORITIES LIST.**

12 (a) Section 105(a)(8)(B) of the Act (42 U.S.C.
13 9605(a)(8)(B)) is amended by striking “as part of the
14 plan”, and by inserting before “Within” the sentence
15 “The National Priorities List, and any modifications to
16 the National Priorities List, may be adopted administra-
17 tively, and without rulemaking.”.

18 (b) Section 105(a)(8) of the Act (42 U.S.C.
19 9605(a)(8)) is amended by adding after subparagraph (B)
20 the following new subparagraph:

21 “(C) before determining that a facility is to be
22 listed on the National Priorities List, the Adminis-
23 trator shall publish a notice proposing the facility
24 for listing on the National Priorities List and shall
25 provide an opportunity for public comment. Public
26 notice and opportunity for comment also shall be

1 provided before a decision by the Administrator to
2 remove a facility from the National Priorities List.
3 The Administrator shall establish a procedure under
4 which any person may request that a facility be con-
5 sidered for listing on, or removal from, the National
6 Priorities List. The Administrator has the sole dis-
7 cretion to list or remove a facility on the National
8 Priorities List.”.

9 **SEC. 207. THE STATE REGISTRY.**

10 Section 105(a)(8) of the Act (42 U.S.C. 9605(a)(8))
11 is amended by adding after subparagraph (C) (as added
12 by this Act) a new subparagraph—

13 “(D) STATE REGISTRY.—Each State shall
14 maintain and make available to the public a list of
15 facilities in the State that are believed to present a
16 current or potential hazard to human health or the
17 environment due to the release or threatened release
18 of hazardous substances or pollutants or contami-
19 nants. Each State, in consultation with the Adminis-
20 trator and other appropriate federal agencies, shall
21 prepare such listing, and shall, on an annual basis,
22 publish the State Registry, specifying the govern-
23 mental agency addressing the facility, and whether
24 the facility is on the National Priorities List.”.

1 **TITLE III—VOLUNTARY RESPONSE**

2 **SEC. 301. PURPOSES AND OBJECTIVES.**

3 The purposes and objectives of this title are to—

4 (a) significantly increase the pace of response
5 activities at contaminated sites by promoting and
6 encouraging the development and expansion of State
7 voluntary response programs; and

8 (b) benefit the public welfare by returning con-
9 taminated sites to economically productive uses.

10 **SEC. 302. STATE VOLUNTARY RESPONSE PROGRAM.**

11 Title I of the Act is amended by adding after section
12 127 (as added by this Act) the following new section:

13 ~~“SEC. 128. VOLUNTARY RESPONSE PROGRAM.~~

14 ~~“(a) IN GENERAL.—The Administrator shall estab-~~
15 ~~lish a program to provide technical and other assistance~~
16 ~~to the States to establish and expand voluntary response~~
17 ~~programs.~~

18 ~~“(b) VOLUNTARY RESPONSE PROGRAM.—The Ad-~~
19 ~~ministrator shall assist States to establish and administer~~
20 ~~a voluntary program that—~~

21 ~~“(1) covers all eligible facilities, as defined in~~
22 ~~subsection (c) of this section, within the State;~~

23 ~~“(2) provides adequate opportunities for public~~
24 ~~participation, including prior notice and opportunity~~
25 ~~for comment, in selecting response actions;~~

1 ~~“(3) provides opportunities for technical assist-~~
2 ~~ance for voluntary response actions;~~

3 ~~“(4) has the capability, through enforcement or~~
4 ~~other mechanisms, of assuming the responsibility for~~
5 ~~completing a response action if the current owner or~~
6 ~~prospective purchaser fails or refuses to complete the~~
7 ~~necessary response, including operation and mainte-~~
8 ~~nance; and~~

9 ~~“(5) provides adequate oversight and has ade-~~
10 ~~quate enforcement authorities to ensure that vol-~~
11 ~~untary response actions are completed in accordance~~
12 ~~with applicable Federal and State laws, including~~
13 ~~applicable permit requirements and any on-going op-~~
14 ~~eration and maintenance or long-term monitoring~~
15 ~~activities.~~

16 ~~“(c) ELIGIBLE FACILITIES.—~~

17 ~~“(1) Except as provided in paragraph 2 of this~~
18 ~~subsection, the term ‘eligible facility’ means a facil-~~
19 ~~ity or portion of a facility where there has been a~~
20 ~~release or threat of release of a hazardous sub-~~
21 ~~stance, pollutant, or contaminant into the environ-~~
22 ~~ment.~~

23 ~~“(2) The term ‘eligible facility’ does not include~~
24 ~~any of the following—~~

1 “(A) a facility at which a remedial inves-
2 tigation and feasibility study is underway, un-
3 less the Administrator, in consultation with the
4 State, determines that it is appropriate to allow
5 the response action at such a facility to proceed
6 under a voluntary response program;

7 “(B) a facility with respect to which a
8 Record of Decision has been issued under sec-
9 tion 104 of this Act;

10 “(C) a facility with respect to which a cor-
11 rective action permit condition or order has
12 been proposed, issued, modified, or amended to
13 require implementation of specific corrective
14 measures under section 3004(u), 3004(v), or
15 3008(h) of the Solid Waste Disposal Act (42
16 U.S.C. 6924(u), 6924(v), or 6928(h));

17 “(D) a land disposal unit with respect to
18 which a closure notification under subtitle C of
19 the Solid Waste Disposal Act (42 U.S.C. 6921
20 et seq.) has been submitted;

21 “(E) a facility with respect to which an ad-
22 ministrative or judicial order or decree concern-
23 ing the response action has been issued, sought,
24 or entered into by the United States under this
25 Act, the Solid Waste Disposal Act (42 U.S.C.

6901 et seq.); the Atomic Energy Act of 1954
 (42 U.S.C. 2011 et seq.); the Federal Water
 Pollution Control Act (33 U.S.C. 1251 et seq.);
 the Toxic Substances Control Act (15 U.S.C.
 2601 et seq.) or title XIV of the Public Health
 Service Act, commonly known as the Safe
 Drinking Water Act (42 U.S.C. 300(f) et seq.);
 and

“(F) a facility at which assistance for re-
 sponse activities may be obtained under subtitle
 I of the Solid Waste Disposal Act (42 U.S.C.
 6991 et seq.) from the Leaking Underground
 Storage Tank Trust Fund established under
 section 9508 of the Internal Revenue Code of
 1986.

“(3) A facility listed or proposed for listing on
 the National Priorities List may be an “eligible facil-
 ity” if—

“(A) the facility is not a facility identified
 in paragraph (2);

“(B) the State in which the facility is lo-
 cated has obtained a State authorization or re-
 ferral under section 127 of this Act; and

1 “(C) the Administrator concurs in the
2 State’s determination to address the facility
3 under its voluntary response program.

4 “(d) ANNUAL REPORTING.—The Administrator shall
5 report, not later than 1 year after enactment of this Act
6 and annually thereafter, to the Congress on the status of
7 State voluntary response programs including—

8 “(1) whether the State’s voluntary response
9 program continues to meet the criteria set forth in
10 subsection (b) or (c);

11 “(2) whether the State has adopted procedures
12 to ensure that all response actions completed or un-
13 dertaken under the State’s voluntary response pro-
14 gram comply with all applicable Federal and State
15 laws;

16 “(3) whether public participation opportunities
17 have been adequate during the process of selecting
18 a response action for each voluntary response;

19 “(4) whether voluntary response actions com-
20 pleted or undertaken under the State voluntary re-
21 sponse program have been implemented in a manner
22 that has reduced or eliminated risks to human
23 health and the environment to the satisfaction of the
24 State;

1 ~~“(5) whether voluntary response actions com-~~
 2 ~~pleted or undertaken under the State voluntary re-~~
 3 ~~sponse program at facilities listed or proposed for~~
 4 ~~listing on the National Priorities List were con-~~
 5 ~~ducted in accordance with section 121(d) of this Act;~~
 6 ~~and~~

7 ~~“(6) whether a voluntary response action has~~
 8 ~~increased risk to human health or the environment,~~
 9 ~~and whether a State has taken timely and appro-~~
 10 ~~prate steps to reduce or eliminate that risk to~~
 11 ~~human health or the environment.~~

12 ~~“(e) STATUTORY CONSTRUCTION.—This section is~~
 13 ~~not intended—~~

14 ~~“(1) to impose any requirement on a State vol-~~
 15 ~~untary response program existing on or after the~~
 16 ~~date of enactment of this Act; or~~

17 ~~“(2) to affect the liability of any person or re-~~
 18 ~~sponse authorities afforded under any law (including~~
 19 ~~any regulation) relating to environmental contamina-~~
 20 ~~tion, including this Act (except as expressly provided~~
 21 ~~in section 101(39)(D) (42 U.S.C. 9601(39)(D)), sec-~~
 22 ~~tion 107(a)(5)(C) (42 U.S.C. 9607(a)(5)(C)), the~~
 23 ~~Solid Waste Disposal Act (42 U.S.C. 6901 et. seq.),~~
 24 ~~the Federal Water Pollution Control Act (33 U.S.C.~~
 25 ~~1251 et. seq.), the Toxic Substances Control Act (15~~

1 U.S.C. 2601 et. seq.), or title XIV of the Public
 2 Health Service Act, commonly known as the “Safe
 3 Drinking Water Act” (42 U.S.C. 300(f) et. seq.).”.

4 **SEC. 303. SITE CHARACTERIZATION PROGRAM.**

5 Title I of the Act is amended by adding after section
 6 128 (as added by this Act) the following new section:

7 **“SEC. 129 SITE CHARACTERIZATION TECHNICAL ASSIST-**
 8 **ANCE PROGRAM**

9 “(a) IN GENERAL.—The Administrator shall estab-
 10 lish a program to provide technical and other assistance
 11 to municipalities to conduct site characterizations for fa-
 12 cilities at which voluntary response actions are being con-
 13 ducted or are proposed to be conducted pursuant to a
 14 State voluntary response program that meets the require-
 15 ments described in section 127.

16 “(b) TECHNICAL ASSISTANCE.—In carrying out the
 17 program established under subsection (a), the Adminis-
 18 trator may provide technical and other assistance to a mu-
 19 nicipality to conduct a site characterization of a facility
 20 within the jurisdiction of the municipality at which vol-
 21 untary response actions are being conducted or are pro-
 22 posed to be conducted. A municipality requesting technical
 23 and other assistance shall provide to the Administrator the
 24 following information—

1 “(1) describing the facility at which voluntary
2 response actions are being conducted or are pro-
3 posed to be conducted;

4 “(2) demonstrating the financial need of the
5 owner or prospective purchaser of such a facility for
6 funds to conduct a site characterization;

7 “(3) analyzing the potential of the facility for
8 creating new businesses and employment opportuni-
9 ties on completion of the response action;

10 “(4) estimating the fair market value of the site
11 after the proposed or ongoing response action, if a
12 response action is necessary;

13 “(5) regarding the economic viability and com-
14 mercial activity on real property—

15 “(A) located within the immediate vicinity
16 of the affected site at the time of consideration
17 of the application; or

18 “(B) projected to be located within the im-
19 mediate vicinity of the affected site by the date
20 that is 5 years after the date of the consider-
21 ation of the application;

22 “(6) regarding the potential of the facility for
23 creating new businesses and employment opportuni-
24 ties on completion of a response action;

1 ~~“(7) regarding whether the affected site is lo-~~
 2 ~~cated in an economically distressed community;~~

3 ~~“(8) regarding the presence of multiple sources~~
 4 ~~of risk as described in section 117(k) of this Act;~~
 5 ~~and~~

6 ~~“(9) in such form, as the Administrator consid-~~
 7 ~~ers appropriate to carry out the purposes of this sec-~~
 8 ~~tion.”.~~

9 **TITLE IV—LIABILITY AND ALLOCATION**

10 **SEC. 401. RESPONSE AUTHORITIES.**

11 (a) Section 104(e)(2) of the Act (42 U.S.C.
 12 9604(e)(2)) is amended by deleting the word “cleanup”
 13 and inserting the phrase “response action”, and inserting
 14 after subparagraph (C) the following:

15 ~~“(D) The nature and extent of all activities~~
 16 ~~and operations at such vessel or facility, includ-~~
 17 ~~ing the identity of any persons engaged in, re-~~
 18 ~~sponsible for, controlling, or having the ability~~
 19 ~~to control such activities or operations.~~

20 ~~“(E) Information relating to the liability or~~
 21 ~~responsibility of any person to perform or pay~~
 22 ~~for a response action.~~

23 ~~“(F) Information that is otherwise relevant~~
 24 ~~to enforce the provisions of this Act.”.~~

1 (b) Section 104(e)(7) of the Act (42 U.S.C. 9604(e))
2 is amended to read as follows:

3 ~~“(7) ADMINISTRATIVE SUBPOENAS.—When it~~
4 would assist in the collection of information nec-
5 essary or appropriate for the purposes of implement-
6 ing this Act, the President may by subpoena require
7 the attendance and testimony of witnesses and the
8 production of reports, papers, documents, answers to
9 questions, and other information that the President
10 deems necessary. Witnesses shall be paid the same
11 fees and mileage that are paid witnesses in the
12 courts of the United States. In the event of contu-
13 macy or failure or refusal of any person to obey any
14 such subpoena, any district court of the United
15 States in which venue is proper shall have jurisdic-
16 tion to order any such person to comply with such
17 subpoena. Any failure to obey such an order of the
18 court is punishable by the court as a contempt
19 thereof.

20 ~~“(8) CONFIDENTIALITY OF INFORMATION.—~~

21 ~~“(A) Any records, reports, or information~~
22 obtained from any person under this section
23 (including records, reports or information ob-
24 tained by representatives of the President and
25 records, reports or information obtained pursu-

1 ant to a contract, grant or other agreement to
2 perform work pursuant to this section, but not
3 including documents, reports, compilations,
4 summaries, or other analyses prepared by the
5 President or representatives of the President
6 which reference or incorporate information ob-
7 tained under this section) shall be available to
8 the public, except as follows:

9 “(i) Upon a showing satisfactory to
10 the President (or the State, as the case
11 may be) by any person that records, re-
12 ports or information, or any particular
13 part thereof (other than health or safety
14 effects data), to which the President (or
15 the State, as the case may be) or any offi-
16 cer, employee, or representative has access
17 under this section if made public would di-
18 vulge information entitled to protection
19 under section 1905 of title 18 of the Unit-
20 ed States Code, such information or par-
21 ticular portion thereof shall be considered
22 confidential in accordance with the pur-
23 poses of that section, except that such
24 record, report, document or information
25 may be disclosed to other officers, employ-

1 ees, or authorized representatives of the
2 United States (including government con-
3 tractors) concerned with carrying out this
4 chapter, or when relevant in any proceed-
5 ing under this chapter, or, if such records,
6 reports or information are obtained or sub-
7 mitted to the United States (or the State,
8 as the case may be) pursuant to a con-
9 tract, grant or other agreement to perform
10 work pursuant to this section, to persons
11 from whom the President seeks to recover
12 costs pursuant to this Act.

13 “(ii) This section does not require
14 that information which is exempt from dis-
15 closure pursuant to section 522(a) of title
16 5 of the United States Code by reason of
17 subsection (b)(5), subsection (b)(6), or
18 subsection (b)(7) of such section, be avail-
19 able to the public, nor shall the disclosure
20 of any such information pursuant to this
21 section authorize disclosure to other par-
22 ties or be deemed to waive any confiden-
23 tiality privilege available to the President
24 under any federal or State law.”.

1 **SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.—**

2 (a) Section 106(a) of the Act (42 U.S.C. 9606(a))
3 is amended by—

4 (1) inserting after the phrase “hazardous sub-
5 stance” the phrase “, or pollutant or contaminant”;
6 and

7 (2) by adding at the end thereof the following:
8 “The President may amend such orders and issue
9 additional orders, as appropriate, without a subse-
10 quent finding of an imminent and substantial
11 endangerment, to complete response action under-
12 taken in response to a release or substantial threat
13 of a release, or to require additional response actions
14 that are necessary or appropriate.”.

15 (b) Section 106(b)(1) of the Act (42 U.S.C.
16 9606(b)(1)) is amended

17 (1) by striking out the phrase “to enforce such
18 order”, and

19 (2) by inserting before the period “, or be re-
20 quired to comply with such order, or both, even if
21 another party has complied, or is complying, with
22 the terms of the same order or another order per-
23 taining to the same facility, release or threatened re-
24 lease”; and

1 (3) by inserting at the end of the paragraph the
 2 following “For purposes of this title, a ‘sufficient
 3 cause’ requires—

4 “(A) an objectively reasonable belief by the
 5 person to whom the order is issued that the
 6 person is not liable for any response costs under
 7 section 107 of this title; or

8 “(B) that the action to be performed pur-
 9 suant to the order is determined to be inconsis-
 10 tent with the national contingency plan.

11 The existence or results of an allocation process pur-
 12 suant to section 122a of this title shall not affect or
 13 constitute a basis for a determination of ‘sufficient
 14 cause.’”.

15 (c) Section 106(b)(2) is amended by moving the sec-
 16 ond sentence of subsection (b)(2)(A) and redesignating it
 17 as subsection (b)(4), and by striking the word “para-
 18 graph” in such newly designated subsection (b)(4) and re-
 19 placing it with the word “subsection”.

20 (d) Section 106(b)(2)(A) of the Act (42 U.S.C.
 21 9602(b)(2)(A)) is amended by striking out the phrase
 22 “completion of ”, and inserting the phrase “the President
 23 determines that such person has completed”.

24 (e) Section 106(b)(2)(C) of the Act (42 U.S.C.
 25 9606(b)(2)(C)) is amended by inserting after the words

1 “Subparagraph (D)” the phrase”, or as may be authorized
 2 in a settlement entered into under section 122a of this
 3 title.”.

4 **SEC. 403. LIMITATIONS TO LIABILITY FOR RESPONSE**
 5 **COSTS.**

6 Section 107 of the Act (42 U.S.C. 9607), is amended
 7 (a) in subsection (a) by inserting:

8 “(5) Notwithstanding paragraphs (1) through
 9 (4) of this subsection, a person who does not impede
 10 the performance of response actions or natural re-
 11 source restoration shall not be liable—

12 “(A) to the extent liability is based solely
 13 on subsection 107(a)(3) or 107(a)(4) of this
 14 Act, and the arrangement for disposal, treat-
 15 ment, or transport for disposal or treatment, or
 16 the acceptance for transport for disposal or
 17 treatment, involved less than five hundred
 18 pounds of municipal solid waste (MSW) or sew-
 19 age sludge as defined in sections 101(41) and
 20 101(44) of this Act, respectively, or such great-
 21 er or lesser amount as the Administrator may
 22 determine by regulation;

23 “(B) to the extent liability is based solely
 24 on subsection 107(a)(3) or 107(a)(4) of this
 25 Act, and the arrangement for disposal, treat-

1 ment, or transport for disposal or treatment, or
2 the acceptance for transport for disposal or
3 treatment, involved less than ten pounds or li-
4 ters of materials containing hazardous sub-
5 stances or pollutants or contaminants or such
6 greater or lesser amount as the Administrator
7 may determine by regulation, except where—

8 “(i) the Administrator has determined
9 that such material contributed significantly
10 or could contribute to the costs of response
11 at the facility; or

12 “(ii) the person has failed to respond
13 fully and completely to information re-
14 quests by the United States, or has filed to
15 certify that, on the basis of information
16 within its possession, it qualifies for this
17 exception;

18 “(C) to the extent liability is based solely
19 on subsection 107(a)(1) of this Act, for a re-
20 lease or threat of release from a facility, and
21 the person is a bona fide prospective purchaser
22 of the facility as defined in section 101(39);

23 “(D) to the extent the liability of a depart-
24 ment, agency, or instrumentality of the United
25 States is based solely open section 107(a)(1) or

1 (2) with regard to a facility over which the de-
2 partment, agency, or instrumentality exercised
3 no regulatory or other control over activities
4 that directly or indirectly resulted in a release
5 or threat of release of a hazardous substance,
6 and—

7 “(i) all activities that directly or indi-
8 rectly resulted in a release or threat of a
9 release of a hazardous substance during
10 the period of ownership by the United
11 States occurred prior to 1976;

12 “(ii) the activities either directly or in-
13 directly resulting in a release or a threat of
14 a release of a hazardous substance at the
15 facility were pursuant to a statutory au-
16 thority;”

17 “(iii) such department, agency, or in-
18 strumentality of the United States did not
19 cause or contribute to the release or threat
20 of release of hazardous substances or pol-
21 lutants or contaminants at the facility; and

22 “(iv) there are persons, other than the
23 United States, who are both potentially lia-
24 ble for the release of hazardous substances
25 or pollutants or contaminants at the facil-

1 ity and fully capable of performing or fi-
2 nancing the response action at the facility;
3 or

4 “(E) to the extent the liability of a Federal
5 or State entity or municipality is based solely
6 on its ownership of a road, street, or other right
7 of way or other public transportation route over
8 which hazardous substances are transported, or
9 the granting of a license or permit to conduct
10 business; or

11 “(F) for more than 10 per centum of total
12 response costs at the facility, in aggregate, for
13 all persons to the extent their whose liability is
14 based solely on subsections 107(a)(3) or
15 107(a)(4) of this Act, and the arrangement for
16 disposal, treatment, or transport for disposal or
17 treatment, or the acceptance for transport for
18 disposal or treatment involved only municipal
19 solid waste (MSW) or sewage sludge as defined
20 in sections 101(41) and 101(44), respectively,
21 of this Act. Such limitation on liability shall
22 apply only—

23 “(i) where either the acts or omissions
24 giving rise to liability occurred before the
25 date thirty-six months after enactment of

1 this paragraph, or the person asserting the
 2 limitation institutes or participates in a
 3 qualified household hazardous waste collec-
 4 tion program within the meaning of section
 5 101(43); and

6 “~~(ii)~~ where the disposal did not occur
 7 on lands owned by the United States or
 8 any department, agency, or instrumentality
 9 thereof, or on any tribal land.”.

10 (b) By inserting after subsection (m) the following:

11 “~~(n)~~ PROSPECTIVE PURCHASER AND WINDFALL
 12 LIEN.—Where there are unrecovered response costs for
 13 which an owner of a facility is not liable by operation of
 14 subsection 107(a)(5)(C) of this Act, and a response action
 15 for which there are unrecovered costs inures to the benefit
 16 of such owner, the United States shall have a lien upon
 17 the facility for such unrecovered costs. Such lien—

18 “~~(1)~~ shall not exceed the increase in fair market
 19 value of the property attributable to the response ac-
 20 tion at the time of a subsequent sale or other dis-
 21 position of property;

22 “~~(2)~~ shall be subject to the requirements for no-
 23 tice and validity established in paragraph (3) of sub-
 24 section ~~(l)~~ of this section; and

1 ~~“(3) shall continue until the earlier of satisfac-~~
2 ~~tion of the lien, or recovery of all response costs in-~~
3 ~~curred at the facility.”.~~

4 ~~(c) Section 120 of the Act (42 U.S.C. 9620) is~~
5 ~~amended by inserting before the word “Facilities” in the~~
6 ~~title of the section the phrase “Entities And”.~~

7 ~~(d) Section 120(a)(1) of the Act (42 U.S.C.~~
8 ~~9620(a)(1)) is amended—~~

9 ~~(1) after the word “title” in the first sentence~~
10 ~~by inserting the phrase “the right to contribution~~
11 ~~protection set forth in sections 113 and 122, when~~
12 ~~such department, agency or instrumentality resolves~~
13 ~~its share of liability under this Act and liability for~~
14 ~~all federal civil and administrative penalties and~~
15 ~~finest imposed under this Act, regardless of whether~~
16 ~~such penalties and fines are punitive or coercive in~~
17 ~~nature or are imposed for isolated or continuing vio-~~
18 ~~lations.”;~~

19 ~~(2) by inserting the word “other” before the~~
20 ~~phrase “person or entity” in the second sentence~~
21 ~~and by inserting after the second sentence the fol-~~
22 ~~lowing new sentence “The waiver of immunity in~~
23 ~~this section does not encompass uniquely govern-~~
24 ~~mental actions such as—~~

1 “(A) any actions of any department, agen-
 2 cy or instrumentality, except for official seizure
 3 of or holding title to a facility, taken pursuant
 4 to Federal authority to regulate the economy in
 5 preparation for, during, or otherwise in connec-
 6 tion with war through the use and implementa-
 7 tion of national priority rating systems, national
 8 wage, profit and price incentives or controls, or
 9 otherwise to mobilize the national economy for
 10 war-related production; or

11 “(B) any actions of any department, agen-
 12 cy, or instrumentality taken in response to a
 13 natural disaster pursuant to the Emergency
 14 Flood Control Work Act (33 U.S.C. 701(n)), or
 15 the Disaster Relief Act of 1974 (42 U.S.C.
 16 5121 et seq.).”;

17 (e) Section 120(a)(4) of the Act (42 U.S.C.
 18 9620(a)(4)) is amended—

19 (1) by inserting “currently” before “owned” in
 20 the first sentence;

21 (2) by inserting after the word “United States”
 22 the phrase “in the following circumstances: (A)”;
 23 and

24 (3) by inserting after the word “List” “; (B)
 25 when such facilities are included on the National

1 Priorities List but are specifically referred to the
2 State by the Administrator pursuant to the provi-
3 sions of section 127 of this Act; or (C) when such
4 laws are part of an authorized program approved by
5 the Administrator pursuant to section 127 of this
6 Act, and such facilities are included on the National
7 Priorities List and are to be addressed by the State
8 authorized program pursuant to section 127 of this
9 Act.

10 “Each department, agency, or instrumentality
11 of the United States shall be subject to State re-
12 quirements, both substantive and procedural, re-
13 specting liability for the costs of responding to re-
14 leases or threats of releases of hazardous substances
15 at non-federally owned facilities referred to the State
16 pursuant to section 127 of this Act, or such require-
17 ments that are part of a State authorized program
18 for non-federally owned facilities being addressed
19 under a State authorized program pursuant to sec-
20 tion 127 of this Act.”;

21 (4) after the word “preceding” by replacing the
22 word “sentence” with “sentences”;

23 (5) at the end of the section by adding “This
24 waiver of immunity for such facilities shall include
25 all civil and administrative penalties and fines im-

1 posed under such laws, regardless of whether such
2 penalties and fines are punitive or coercive in nature
3 or are imposed for isolated or continuing violations.
4 Neither the United States, nor any agent, employee
5 or officer thereof, shall be immune or exempt from
6 any process or sanction of any State or Federal
7 Court with respect to the enforcement of any appro-
8 priate relief under such laws, but the United States
9 shall be entitled to remove any action filed in State
10 court against any department, agency, instrumental-
11 ity, employee or officer of the United States to the
12 appropriate Federal district court. No agent, em-
13 ployee, or officer of the United States shall be per-
14 sonally liable for any civil or administrative penalty
15 under any Federal or State law with respect to any
16 act or omission within the scope of the official duties
17 of the agent, employee, or officer. All funds collected
18 by a State from the Federal Government from pen-
19 alties and fines imposed for violation of any sub-
20 stantive or procedural requirement referred to in
21 this subsection shall be used by the State only for
22 projects designed to improve or protect the environ-
23 ment or to defray the costs of environmental protec-
24 tion or enforcement.”.

1 (f) Section 120(j)(1) of the Act (42 U.S.C.
 2 9620(j)(1)) is amended before the phrase “with respect
 3 to the site” in the second sentence by inserting “or any
 4 State law applicable under section 120(a)(4)”.

5 **SEC. 404 LIABILITY.**

6 (a) Section 107(a)(1) of the Act (42 U.S.C.
 7 9607(a)(1)) is amended by striking the word “and” and
 8 inserting the word “or”;

9 (b) Section 107(a)(3) of the Act (42 U.S.C.
 10 9607(a)(3)) is amended by striking out the phrase “by
 11 any other party or entity,”;

12 (c) Section 107(a)(4) of the Act (42 U.S.C.
 13 9607(a)(4)) is amended—

14 (1) by inserting a blank line before the phrase
 15 “from which there is a release”;

16 (2) by moving the phrase “from which there is
 17 a release” to the left margin;

18 (3) inserting a comma after the phrase “threat-
 19 ened release”; and

20 (d) Section 107(a)(4)(A) of the Act (42 U.S.C.
 21 9607(a)(4)(A)) is amended by inserting the phrase “, in-
 22 cluding direct costs, indirect costs, and costs of overseeing
 23 response actions conducted by private parties” before the
 24 phrase “incurred by the United States”.

1 (e) Section 107(a)(4)(B) of the Act (42 U.S.C.
2 9607(a)(4)(B)) is amended—

3 (1) by striking out the word “other” both times
4 it appears; and

5 (2) by inserting the phrase “other than the
6 United States, a State or an Indian tribe” before the
7 phrase “consistent with the national contingency
8 plan”.

9 (f) Section 107(c)(3) of the Act (42 U.S.C.
10 9607(c)(3)) is amended—

11 (1) by inserting the phrase “in addition to li-
12 ability for any response costs incurred by the United
13 States as a result of such failure to take proper ac-
14 tion,” after the word “person” the second time it ap-
15 pears;

16 (2) by striking out the phrase “at least equal
17 to, and not more than” and inserting the phrase “up
18 to”;

19 (3) by striking out the comma after the word
20 “times”; and

21 (4) by striking out the phrase “any costs in-
22 curred by the Fund as a result of such failure to
23 take proper action” and inserting the phrase “such
24 response costs”.

1 ~~(g) Section 107 of the Act (42 U.S.C. 9607(a)(4)(B))~~
2 is amended by inserting the phrase “, or pollutant or con-
3 taminant” after the term “hazardous substance” or “haz-
4 ardous substances” wherever they appear in sections
5 107(a)(2), (3) and (4); 107(b); 107(c); 107(d)(1) and (2);
6 107(f)(1); 107(i); 107(j); and 107(k)(1)(B).

7 **SEC. 405. CIVIL PROCEEDINGS.**

8 (a) Section 113(a) of the Act (42 U.S.C. 9613(a))
9 is amended—

10 (1) by striking out the phrase “upon application
11 by any interested person”, and inserting the phrase
12 “by any adversely affected person through the filing
13 of a petition for review”; and

14 (2) by striking out the phrase “application shall
15 be made”, and inserting in lieu thereof “petition
16 shall be filed”.

17 (b) Section 113(b) of the Act (42 U.S.C. 9613(b))
18 is amended—

19 (1) before “without regard to the citizenship,”
20 by inserting the phrase “or in any manner limiting
21 or affecting the President’s ability to carry out a re-
22 sponse action under this title,”; and

23 (2) by inserting immediately after the first sen-
24 tence the following sentence—“Any action initiated
25 in any state or local court against the United States

1 ~~(or any department, agency, or instrumentality, offi-~~
 2 ~~cer or employee thereof) pursuant to or under any~~
 3 ~~provision of or authorized by this title may be re-~~
 4 ~~moved by the United States to the appropriate fed-~~
 5 ~~eral district court in accordance with section 1446 of~~
 6 ~~title 18 of the United States Code.”.~~

7 ~~(c) Section 113(g) of the Act (42 U.S.C. 9613(g))~~
 8 ~~is amended by striking paragraphs (2) and (3) and insert-~~
 9 ~~ing:~~

10 ~~“(2) ACTIONS FOR RECOVERY OF COSTS.—Ex-~~
 11 ~~cept as provided in paragraph (3) below, an initial~~
 12 ~~action for recovery of costs referred to in section~~
 13 ~~107 of this title must be commenced—~~

14 ~~“(A) for removal action, within three years~~
 15 ~~after completion of all removal action taken~~
 16 ~~with respect to the facility, including off-site~~
 17 ~~disposal of any removed materials; except that~~
 18 ~~if physical on-site construction of the remedial~~
 19 ~~action is initiated within three years after the~~
 20 ~~completion of all removal action taken with re-~~
 21 ~~spect to the facility, costs incurred for removal~~
 22 ~~action may be recovered in the cost recovery ac-~~
 23 ~~tion brought under subparagraph (B); and~~

1 “(B) for a remedial action, within six years
2 after initiation of physical on-site construction
3 of the remedial action.

4 In any such action described in this subsection, the
5 court shall enter a declaratory judgment on liability
6 for response costs or damages that will be binding
7 on any subsequent action or actions to recover fur-
8 ther response costs or damages. A subsequent action
9 or actions under section 107 of this title for further
10 response costs at the vessel or facility may be main-
11 tained at any time during the response action, but
12 must be commenced no later than three years after
13 the date of completion of all response action. Except
14 as otherwise provided in this paragraph, an action
15 may be commenced under section 107 of this title
16 for recovery of costs at any time after such costs
17 have been incurred.

18 “(3) CONTRIBUTING.—An action by a poten-
19 tially responsible party against another potentially
20 responsible party for recovery of any response costs
21 or damages must be commenced within the later
22 of—

23 “(A) the time limitations set forth in para-
24 graph (2) above, or

1 “(B) where recovery is sought for costs or
2 damages paid pursuant to a judgment or settle-
3 ment, three years after—

4 “(i) the date of judgment in any ac-
5 tion under this Act for recovery of such
6 costs or damages; or

7 “(ii) the date of any administrative
8 order or judicial settlement for recovery of
9 the costs or damages paid or incurred pur-
10 suant to such a settlement.”.

11 (d) Section 113(g) of the Act (42 U.S.C. 9613(g))
12 is amended by inserting the following at the end thereof:

13 “(4) CLAIMS BY THE UNITED STATES, STATES
14 OR INDIAN TRIBES.—Claims by the United States
15 under section 106, and claims by the United States,
16 a State or Indian tribe under section 107(a), of this
17 Act shall not be deemed compulsory counterclaims in
18 an action against the United States, a State or an
19 Indian tribe seeking response costs, contribution,
20 damages, or any other claim by any person under
21 this Act.”.

22 (e) Section 113(j)(1) of the Act (42 U.S.C.
23 9613(j)(1) is amended—

1 (1) before the phrase “or ordered” by inserting
2 the phrase “or selected by the President pursuant to
3 this Act,”; and

4 (2) after the phrase “or ordered” by inserting
5 the phrase “or sought”.

6 **SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.**

7 Section 113 of the Act (42 U.S.C. 9613) is amended
8 (a) by amending subsection (f)(1) as follows—

9 (1) by redesignating the paragraph as subpara-
10 graph “(1)(A),”;

11 (2) before the phrase “may seek contribution”
12 by inserting the phrase “who is liable or potentially
13 liable under section 107(a) of this title”;

14 (3) by striking out the phrase “during or fol-
15 lowing any civil action under section 106 of this title
16 or under section 107(a) of this title”, and inserting
17 in lieu thereof the phrase “in a claim asserted under
18 section 107(a)”;

19 (4) by deleting the period at the end of the first
20 sentence, and inserting “except that there shall be
21 no right of contribution where—

22 “(i) the person asserting the right of con-
23 tribution has waived such rights in a settlement
24 pursuant to this Act;

1 “(ii) the person from whom contribution is
 2 sought is liable solely under section 107(a)(3)
 3 of this Act, and contributed less than ten
 4 pounds or ten liters of material containing haz-
 5 ardous substances at the facility, or such great-
 6 er or lesser amount as the Administrator may
 7 determine by regulation;

8 “(iii) the person from whom contribution is
 9 sought has entered into a final settlement with
 10 the United States pursuant to section 122(g);

11 (5) before the phrase “this section and the Fed-
 12 eral Rules” by inserting the phrase “section
 13 107(a),”; and

14 (6) by striking out the sentence “Nothing in
 15 this subsection shall diminish the right of any per-
 16 son to bring an action for contribution in the ab-
 17 sence of a civil action under section 106 of this title
 18 or section 107 of this title.”.

19 (b) By inserting after subparagraph (1)(A) the fol-
 20 lowing subparagraph—

21 “(B) Any person who commences an action for
 22 contribution against a person who is not liable by
 23 operation of subsection 107(a)(5) of this Act, or
 24 against a person who is protected from suits in con-
 25 tribution by this section or by a settlement with the

1 United States, shall be liable to the person against
2 whom the claim of contribution is brought for all
3 reasonable costs of defending against the claim, in-
4 cluding all reasonable attorney's and expert witness
5 fees.”.

6 (c) Section 113(f) of the Act (42 U.S.C. 9613(f)) is
7 amended by striking out paragraph (2), and inserting the
8 following:

9 “(2) SETTLEMENT.—A person that has re-
10 solved its liability to the United States in an admin-
11 istrative or judicially approved settlement shall not
12 be liable for claims by other persons regarding re-
13 sponse actions, response costs or damages addressed
14 in the settlement. A person that has resolved its li-
15 ability to a State in an administrative or judicially
16 approved settlement shall not be liable for claims by
17 persons other than the United States regarding re-
18 sponse costs or damages addressed in the settlement
19 for which the State has a claim under this title.
20 Such settlement does not discharge any other poten-
21 tially responsible persons unless its terms so provide,
22 but it reduces the potential liability of such other
23 persons by the amount of the settlement. The pro-
24 tection afforded by this section shall include protec-
25 tion against contribution claims and all other types

1 of claims, under Federal or State law, that may be
 2 asserted against the settling party for recovery of re-
 3 sponse costs or damages incurred or paid by another
 4 person, if such costs or damages are addressed in
 5 the settlement, but shall not include protection
 6 against claims based on contractual indemnification
 7 or other express contractual agreements to pay such
 8 costs or damages.”.

9 **SEC. 407. SCOPE OF RULEMAKING AUTHORITY.**

10 Section 115 of the Act (42 U.S.C. 9615), is amended
 11 by redesignating the text of the section as subsection “(a)”
 12 and adding a new subsection:

13 “(b) The authority conferred by this section includes,
 14 without limitation, authority to promulgate legislative reg-
 15 ulations to define the terms and scope of sections 101
 16 through 405 of this Act, inclusive.

17 “(c) This section confirms, without limitation, au-
 18 thority to promulgate regulations to define the terms of
 19 this Act as they apply to lenders and other financial serv-
 20 ices providers, and property custodians, trustees, and
 21 other fiduciaries.”.

22 **SEC. 408. ENHANCEMENT OF SETTLEMENT AUTHORITIES.**

23 Section 122 of the Act (42 U.S.C. 9622), is amend-
 24 ed—

25 (a) by striking out subparagraph (c)(3);

1 (b) by redesignating subparagraphs (c) (4) and
2 (5) as subparagraphs (c) (3) and (4), respectively;

3 (c) by redesignating subparagraph (c)(6) as a
4 new section 122(o) and by amending redesignated
5 section 122(n)—

6 (1) by deleting “remedial investigation and
7 feasibility study” and inserting in lieu thereof
8 “response action”; and

9 (2) by deleting “remedial action” in both
10 places where it appears and inserting “response
11 action”;

12 (d) by inserting at the end of section 122 the
13 following—

14 “(p) RETENTION OF FUNDS.—If, as part of any
15 agreement under this Chapter, the President will be carry-
16 ing out any action and the parties will be paying amounts
17 to the President, the President may retain such amounts
18 in interest bearing accounts, and use such amounts, to-
19 gether with accrued interest, for purposes of carrying out
20 the agreement.

21 “(q) Notwithstanding the limitations on review in sec-
22 tion 113(h), and except as provided in subsection (g) of
23 this section, a person whose claim for response costs or
24 contribution is limited as a result of contribution protec-
25 tion afforded by an administrative settlement under this

1 section may challenge the cost recovery component of such
 2 settlement only by filing a complaint against the Adminis-
 3 trator in the United States District Court within 60 days
 4 after such settlement becomes final. Venue shall lie in the
 5 district in which the appropriate Regional Administrator
 6 has her principal office. Any review of an administrative
 7 settlement shall be limited to the administrative record,
 8 and the settlement shall be upheld unless the objecting
 9 party can demonstrate on that record that the decision
 10 of the President to enter into the administrative settle-
 11 ment was arbitrary, capricious, or otherwise not in accord-
 12 ance with law.”.

13 (e) by deleting subsection (f)(1) and inserting
 14 in lieu thereof:

15 “(1) FINAL COVENANTS.—The President shall
 16 offer potentially responsible parties who enter into
 17 settlement agreements otherwise acceptable to the
 18 United States a final covenant not to sue concerning
 19 any liability to the United States under this Act, in-
 20 cluding a covenant with respect to future liability,
 21 for response actions or response costs, provided
 22 that—

23 “(A) the settling party agrees to perform,
 24 or there are other adequate assurances of the
 25 performance of, a final remedial action for the

1 release or threat of release that is the subject
2 of the settlement;

3 “(B) The settlement agreement has been
4 reached prior to the commencement of litigation
5 against the settling party under section 106 or
6 107 of this Act with respect to this facility;

7 “(C) The settling party waives all contribu-
8 tion rights against other potentially responsible
9 parties at the facility; and

10 “(D) The settling party pays premium that
11 compensates for the risks of remedy failure; fu-
12 ture liability resulting from unknown condi-
13 tions; unanticipated increases in the cost of any
14 uncompleted response action; unless the settling
15 party is performing the response action; and
16 the United States’ litigation risk with respect to
17 persons who have not resolved their liability to
18 the United States under this Act, unless all
19 parties have settled their liability to the United
20 States, or the settlement covers 100 percent of
21 the United States’ response costs. The Presi-
22 dent shall have sole discretion to determine the
23 appropriate amount of any such premium, and
24 such determinations are committed to the
25 President’s discretion. The President has dis-

1 cretion to waive or reduce the premium pay-
2 ment for persons who demonstrate an inability
3 to pay such a premium.

4 “(2) DISCRETIONARY COVENANTS.—For all
5 other settlements under this title, the President
6 may, in his discretion, provide any person with a
7 covenant not to sue concerning any liability to the
8 United States under this title, if the covenant not to
9 sue is in the public interest. The President may in-
10 clude any conditions in such covenant not to sue, in-
11 cluding but not limited to the additional condition
12 referred to in paragraph (5) of this subsection. In
13 determining whether such conditions or covenants
14 are in the public interest, the President shall con-
15 sider the effectiveness and reliability of the response
16 action, the nature of the risks remaining at the facil-
17 ity, the strength of evidence, the likelihood of cost
18 recovery, the reliability of any response action or ac-
19 tions to restore, replace or acquire the equivalent of
20 injured natural resources, and any other factors rel-
21 evant to the protection of human health, welfare,
22 and the environment.”;

23 (f) by striking out the word “remedial”, wher-
24 ever it appears in paragraph (f)(2), and inserting
25 the word “response”;

1 ~~(g)~~ by deleting paragraphs ~~(f)(3)~~ and ~~(f)(4)~~;

2 ~~(h)~~ by redesignating existing paragraphs ~~(f)(2)~~,
3 ~~(f)(5)~~ and ~~(f)(6)~~ as paragraphs ~~(f)(3)~~, ~~(f)(4)~~, and
4 ~~(f)(5)~~, respectively;

5 ~~(i)~~ in redesignated subparagraph ~~(f)(5)(A)~~—

6 ~~(1)~~ by striking out the word “remedial”,
7 and inserting in lieu thereof the word “re-
8 sponse”;

9 ~~(2)~~ by deleting “paragraph ~~(2)~~” in the
10 first clause of the first sentence and inserting
11 “paragraph (1) or (3)” in lieu thereof; and

12 ~~(3)~~ by deleting “de minimis settlements”
13 and inserting “de minimis and other expedited
14 settlements pursuant to subsection ~~(g)~~ of this
15 section” in lieu thereof;

16 ~~(4)~~ by striking the phrase “the President
17 certifies under paragraph ~~(3)~~ that remedial ac-
18 tion has been completed at the facility con-
19 cerned”, and inserting in lieu thereof the phrase
20 “that the response action that is the subject of
21 the settlement agreement is selected”.

22 ~~(j)~~ by amending redesignated subsection
23 ~~(f)(5)(B)~~—

1 (1) by striking “In extraordinary cir-
 2 cumstances, the” and inserting the word
 3 “~~The~~”;

4 (2) by striking the phrase “those referred
 5 to in paragraph (4) and”;

6 (3) by inserting “the agreement containing
 7 the covenant not to sue provides for payment of
 8 a premium to address possible remedy failure or
 9 any releases that may result from unknown
 10 conditions, and” before the phrase “the other
 11 terms”; and

12 (4) by inserting at the end the following
 13 “~~The President may, in his discretion, waive or~~
 14 reduce the premium payment for persons who
 15 demonstrate an inability to pay such a pre-
 16 mium.”

17 (k) by deleting paragraph (g)(1)(A) and insert-
 18 ing in lieu thereof:

19 “~~(g) EXPEDITED FINAL SETTLEMENT.—~~

20 “~~(1) PARTIES ELIGIBLE FOR EXPEDITED SET-~~
 21 ~~TLEMENT.—Wherever practicable and in the public~~
 22 interest, and as provided in section 122a of this
 23 title, the President will as promptly as possible offer
 24 to reach a final administrative or judicial settlement
 25 with potentially responsible parties who, in the judg-

1 ment of the President, meet one or more of the fol-
2 lowing conditions for eligibility for an expedited set-
3 tlement:

4 “(A) the potentially responsible party’s in-
5 dividual contribution of hazardous substances
6 at the facility is de minimis. The contribution
7 of hazardous substance to a facility by a poten-
8 tially responsible party is de minimis if:

9 “(i) the potentially responsible party’s
10 volumetric contribution of materials con-
11 taining hazardous substances is minimal in
12 comparison to the total volumetric con-
13 tributions at the facility; such individual
14 contribution is presumed to be minimal if
15 it is one percent or less of the total volu-
16 metric contribution at the facility, unless
17 the Administrator identifies a different
18 threshold based on site-specific factors;
19 and

20 “(ii) the potentially responsible par-
21 ty’s hazardous substances do not present
22 toxic or other hazardous effects that are
23 significantly greater than those of other
24 hazardous substances at the facility; or”

1 (1) by inserting the following after subsection
2 (g)(1)(B):

3 “(C) The potentially responsible party’s li-
4 ability is based solely on subsection 107(a)(3)
5 or 107(a)(4) of this title, and the arrangement
6 for disposal, treatment, or transport for dis-
7 posal or treatment, or the acceptance for trans-
8 port for disposal or treatment, involved only
9 municipal solid waste (MSW) or sewage sludge
10 as defined in section 101(41) or 101(44), re-
11 spectively, of this Act. The Administrator may
12 offer to settle the liability of generators and
13 transporters of MSW or sewage sludge whose li-
14 ability is limited pursuant to section
15 107(a)(5)(A) of this title for up to 10 percent
16 of the total response costs at the facility; or

17 “(D) The potentially responsible party is a
18 small business or a municipality and has dem-
19 onstrated to the United States a limited ability
20 to pay response costs. For purposes of this pro-
21 vision—

22 “(i) In the case of a small business,
23 the President shall consider, to the extent
24 that information is provided by the small
25 business, the business’ ability to pay for its

1 total allocated share, and demonstrable
2 constraints on its ability to raise revenues.

3 “(ii) In the case of a municipal owner
4 or operator, the President shall consider,
5 to the extent that information is provided
6 by the municipality, the following factors:

7 (1) the municipality’s general obligation
8 bond rating and information about the
9 most recent bond issue for which the rat-
10 ing was prepared; (2) the amount of total
11 available funds (other than dedicated
12 funds); (3) the amount of total operating
13 revenues (other than obligated or encum-
14 bered revenues); (4) the amount of total
15 expenses; (5) the amounts of total debt
16 and debt service; (6) per capita income;
17 and (7) real property values. A municipal-
18 ity may also submit for consideration by
19 the President an evaluation of the poten-
20 tial impact of the settlement on essential
21 services that the municipality must pro-
22 vide, and the feasibility of making delayed
23 payments or payments over time. If a mu-
24 nicipality asserts that it has additional en-
25 vironmental obligations besides its poten-

1 tial liability under this Act, then the mu-
 2 nicipality may create a list of the obliga-
 3 tions, including an estimate of the costs of
 4 complying with such obligations. A munici-
 5 pality may establish an inability to pay
 6 through an affirmative showing that such
 7 payment of its liability under this Act
 8 would either (I) create a substantial de-
 9 monstrable risk that the municipality
 10 would default on existing debt obligations,
 11 be forced into bankruptcy, be forced to dis-
 12 solve, or be forced to make budgetary cut-
 13 backs that would substantially reduce cur-
 14 rent levels of protection of public health
 15 and safety, or (II) necessitate a violation of
 16 legal requirements or limitations of general
 17 applicability concerning the assumption
 18 and maintenance of fiscal municipal obliga-
 19 tions.”.

20 (m) by deleting paragraphs (2) and (3) of sub-
 21 section (g) and inserting in lieu thereof:

22 “(2) The determination of whether a party is
 23 eligible for an expedited settlement shall be made on
 24 the basis of information available to the President at
 25 the time the settlement is negotiated. Such deter-

mination, and the settlement, are committed to the President's unreviewable discretion. If the President determines not to apply these provisions for expedited settlements at a facility, the basis for that determination must be explained in writing.

“(3) Additional factors relevant to municipalities.—In any settlement with a municipality pursuant to this title, the President may take additional equitable factors into account in determining an appropriate settlement amount, including, without limitation, the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.”.

(n) by striking in paragraph (g)(4) “\$500,000” and inserting “\$2,000,000”.

(o) by striking paragraph (g)(5) and redesignating paragraph (g)(6) as (g)(5).

(p) by amending paragraph (h) by striking—

(1) the title, and inserting the phrase “Authority to settle claims for penalties, punitive damages and cost recovery”; and

1 (2) by striking out the phrase “settlement
2 authority”.

3 (q) by amending paragraph (h)(1)—

4 (1) before the phrase “costs incurred” by
5 inserting the phrase “past and future”;

6 (2) before the phrase “by the United
7 States Government” by inserting the phrase “or
8 that may be incurred”;

9 (3) by inserting after the phrase “if the
10 claim has not been referred to the Department
11 of Justice for further action”, the following:
12 “The head of any department or agency with
13 the authority to seek, or to request the Attor-
14 ney General to seek, civil or punitive damages
15 under this Act may settle claims for any such
16 penalties or damages which may otherwise be
17 assessed in civil administrative or judicial pro-
18 ceedings”; and by striking out “\$500,000”, and
19 inserting in lieu thereof “\$2,000,000”.

20 (r) by striking paragraph (h)(4).

21 **SEC. 409. ALLOCATION PROCEDURES.**

22 The Act is amended by inserting following section
23 ~~122:~~

24 **“SEC. 122a ALLOCATION AT MULTI-PARTY FACILITIES.**

25 “(a) SCOPE.—

1 “(1) Except as provided in paragraph (3) of
2 this section, for each non-federally owned facility
3 listed on the National Priorities List involving two
4 or more potentially responsible parties, the Adminis-
5 trator shall—

6 “(A) initiate the allocation process estab-
7 lished under this section for any remedial action
8 selected by the President after the date of en-
9 actment of the Superfund Reform Act of 1994,
10 and

11 “(B) initiate the allocation process estab-
12 lished in subsections (c)(2) through (d)(3) of
13 this section for any remedial action selected by
14 the President prior to the date of enactment of
15 the Superfund Reform Act of 1994, when re-
16 quested by any potentially responsible party
17 who has resolved its liability to the United
18 States with respect to the remedial action or is
19 performing the remedial action pursuant to an
20 order issued under section 106(a) of this title,
21 to assist in allocating shares among potentially
22 responsible parties. The allocation performed
23 pursuant to this subsection shall not be con-
24 strued to require—

1 “(i) payment of an orphan share pur-
2 suant to subsection (e) of this section; or
3 “(ii) the conferral of reimbursement
4 rights pursuant to subsection (h) of this
5 section.

6 “(2) Except as provided in paragraph (3) of
7 this section, the Administrator may initiate the allo-
8 cation process established under this section with re-
9 spect to any other facility involving two or more po-
10 tentially responsible parties, as the Administrator
11 deems appropriate.

12 “(3) The allocation process established under
13 this section shall not apply to any facility where—

14 “(i) there has been a final settlement, de-
15 cree or order that determines all liability or al-
16 located shares of all potentially responsible par-
17 ties with respect to the facility; or

18 “(ii) where response action is being carried
19 out by a State pursuant to referral or author-
20 ization under section 104(k) of this title.

21 “(4) Nothing in this section limits or affects—

22 “(A) the Administrator’s obligation to per-
23 form an allocation for facilities that have been
24 the subject of partial or expedited settlements;

1 ~~“(B) the ability of a potentially responsible~~
 2 ~~party at a facility to resolve its liability to the~~
 3 ~~United States or other parties at any time be-~~
 4 ~~fore initiation or completion of the allocation~~
 5 ~~process; or~~

6 ~~“(C) the validity, enforceability, finality or~~
 7 ~~merits of any judicial or administrative order,~~
 8 ~~judgment or decree issued, signed, lodged, or~~
 9 ~~entered with respect to liability under this Act,~~
 10 ~~or authorizes modification of any such order,~~
 11 ~~judgment or decree.~~

12 ~~“(b) MORATORIUM ON COMMENCEMENT OR CON-~~
 13 ~~TINUATION OF SUITS.—~~

14 ~~“(1) No person may commence an action pursu-~~
 15 ~~ant to section 107 of this Act regarding a response~~
 16 ~~action for which an allocation must be performed~~
 17 ~~under subsection (a)(1)(A) of this section, or for~~
 18 ~~which the Administrator has initiated an allocation~~
 19 ~~under subsection (a)(1)(B) or (a)(2) of this section,~~
 20 ~~until 60 days after issuance of the allocator’s report~~
 21 ~~under subsection (d)(1) of this section.~~

22 ~~“(2) If an action under section 107 of this Act~~
 23 ~~regarding a response for which an allocation is to be~~
 24 ~~performed under this section is pending (A) upon~~
 25 ~~date of enactment of the Superfund Reform Act of~~

1 ~~1994, or (B) upon initiation of an allocation under~~
2 ~~subsection (a)(1)(B) or (a)(2) of this section, the ac-~~
3 ~~tion shall be stayed until 60 days after the issuance~~
4 ~~of an allocator's report, unless the court determines~~
5 ~~that a stay will not result in a just and expeditious~~
6 ~~resolution of the action.~~

7 ~~“(3) Any applicable limitations period with re-~~
8 ~~spect to actions subject to paragraph (1) shall be~~
9 ~~tolled from the earlier of—~~

10 ~~“(A) the date of listing of the facility on~~
11 ~~the National Priorities list; or~~

12 ~~“(B) the commencement of the allocation~~
13 ~~process pursuant to this section, until 120 days~~
14 ~~after the allocation report required by this sec-~~
15 ~~tion has been provided to the parties to the al-~~
16 ~~location.~~

17 ~~“(4) Nothing in this section shall in any way~~
18 ~~limit or affect the President's authority to exercise~~
19 ~~the powers conferred by sections 103, 104, 105,~~
20 ~~106, or 122 of this title, or to commence an action~~
21 ~~where there is a contemporaneous filing of a judicial~~
22 ~~consent decree resolving a party's liability; or to file~~
23 ~~a proof of claim or take other action in a proceeding~~
24 ~~under title 11 of the United States Code.~~

1 “(5) The procedures established in this section
2 are intended to guide the exercise of settlement au-
3 thority by the United States, and shall not be con-
4 strued to diminish or affect the principles of retro-
5 active, strict, joint and several liability under this
6 title.

7 “(c) COMMENCEMENT OF ALLOCATION.—

8 “(1) RESPONSIBLE PARTY SEARCH.—At all fa-
9 cilities subject to this section, the Administrator
10 shall, as soon as practicable but not later than 60
11 days after the earlier of the commencement of the
12 remedial investigation or the listing of the facility on
13 the National Priorities List, initiate a search for po-
14 tentially responsible parties, using its authorities
15 under section 104 of this title.

16 “(2) NOTICE TO PARTIES.—As soon as prac-
17 ticable after receipt of sufficient information, but
18 not more than eighteen months after commencement
19 of the remedial investigation, the Administrator
20 shall—

21 “(A) notify those potentially responsible
22 parties who will be assigned shares in the allo-
23 cation process and notify the public, in accord-
24 ance with section 117(d) of this title, of the list
25 of potentially responsible parties preliminarily

1 identified by the Administrator to be assigned
2 shares in the allocation process; and

3 “(B) provide the notified potentially re-
4 sponsible parties with a list of neutral parties
5 who are not employees of the United States and
6 who the Administrator determines, in his or her
7 sole discretion, are qualified to perform an allo-
8 cation at the facility.

9 “(3) SELECTION OF ALLOCATOR.—The Admin-
10 istrator shall thereafter—

11 “(A) acknowledge the parties’ selection of
12 an allocator from the list, or select an allocator
13 from the list provided to the parties if the par-
14 ties cannot agree on a selection within 30 days
15 of the notice;

16 “(B) contract with the selected allocator
17 for the provision of allocation services; and

18 “(C) make available all responses to infor-
19 mation requests, as well as other relevant infor-
20 mation concerning the facility and potentially
21 responsible parties, to the parties and to the al-
22 locator within 30 days of the appointment of
23 the allocator. The Administrator shall not make
24 available any privileged or confidential informa-
25 tion, except as otherwise authorized by law.

1 ~~“(4) PROPOSED ADDITION OF PARTIES.—~~

2 ~~“(A) For 60 days after information has~~
3 ~~been made available pursuant to paragraph~~
4 ~~3(C), the parties identified by the Adminis-~~
5 ~~trator and members of the affected community~~
6 ~~shall have the opportunity to identify and pro-~~
7 ~~pose additional potentially responsible parties or~~
8 ~~otherwise provide information relevant to the~~
9 ~~facility or such potentially responsible parties.~~
10 ~~This period may be extended by the Adminis-~~
11 ~~trator for an additional 30 days upon request of~~
12 ~~a party.~~

13 ~~“(B) Within 30 days after the end of the~~
14 ~~period specified in paragraph (A) for identifica-~~
15 ~~tion of additional parties, the Administrator~~
16 ~~shall issue a final list of parties subject to the~~
17 ~~allocation process, hereinafter the “allocation~~
18 ~~parties”.~~ The Administrator shall include in the
19 list of allocation parties those parties identified
20 pursuant to paragraph (A) in the allocation
21 process unless the Administrator determines
22 and explains in writing that there is not a suffi-
23 cient basis in law or fact to take enforcement
24 action with respect to those parties under this
25 title, or that they have entered into an expe-

1 dited settlement under section 122(g). The Ad-
 2 ministrators determination is to be based on
 3 the information available at the time of the de-
 4 termination and is committed to the Adminis-
 5 trators unreviewable discretion.

6 “(5) ~~ROLE OF FEDERAL AGENCIES.~~—Federal
 7 departments, agencies or instrumentalities that are
 8 identified as potentially responsible parties shall be
 9 subject to, and be entitled to the benefits of, the al-
 10 location process provided by this section to the same
 11 extent as any other party.

12 “(6) ~~REPRESENTATION OF THE UNITED~~
 13 ~~STATES.~~—The Administrator and the Attorney Gen-
 14 eral shall be entitled to review all documents and
 15 participate in any phase of the allocation proceeding.

16 “(d) ~~ALLOCATION DETERMINATION.~~—

17 “(1) ~~SETTLEMENT AND ALLOCATION RE-~~
 18 ~~PORT.~~—Following issuance of the list of allocation
 19 parties, the allocator may convene the allocation par-
 20 ties for the purpose of facilitating agreement con-
 21 cerning their shares. If the allocation parties do not
 22 agree to a negotiated allocation of shares, the allo-
 23 cator shall prepare a written report, with a
 24 nonbinding, equitable allocation of percentage shares

1 for the facility, and provide such report to the allo-
2 cation parties and the Administrator.

3 ~~“(2) INFORMATION REQUESTS.—To assist in~~
4 ~~the allocation of shares, the allocator may request~~
5 ~~information from the allocation parties, and may~~
6 ~~make additional requests for information at the re-~~
7 ~~quest of any allocation party. The allocator may re-~~
8 ~~quest the Administrator to exercise any information-~~
9 ~~gathering authority under this title where necessary~~
10 ~~to assist in determining the allocation of shares.~~

11 ~~“(3) FACTORS IN THE ALLOCATION.—Unless~~
12 ~~the allocation parties agree to a negotiated alloca-~~
13 ~~tion, the allocator shall prepare a nonbinding, equi-~~
14 ~~table allocation of percentage shares for the facility~~
15 ~~based on the following factors:~~

16 ~~“(A) the amount of hazardous substances~~
17 ~~contributed by each allocation party;~~

18 ~~“(B) the degree of toxicity of hazardous~~
19 ~~substances contributed by each allocation party;~~

20 ~~“(C) the mobility of hazardous substances~~
21 ~~contributed by each allocation party;~~

22 ~~“(D) the degree of involvement of each al-~~
23 ~~location party in the generation, transportation,~~
24 ~~treatment, storage, or disposal of the hazardous~~
25 ~~substance;~~

1 “(E) the degree of care exercised by each
2 allocation party with respect to the hazardous
3 substance, taking into account the characteris-
4 tics of the hazardous substance;

5 “(F) the cooperation of each allocation
6 party in contributing to the response action and
7 in providing complete and timely information
8 during the allocation process; and

9 “(G) such other factors that the Adminis-
10 trator determines are appropriate by published
11 regulation or guidance, including guidance with
12 respect to the identification of orphan shares
13 pursuant to paragraph (3) of this subsection

14 “(4) IDENTIFICATION OF ORPHAN SHARES.—

15 The allocator may determine that a percentage share
16 for the facility is specifically attributable to an “or-
17 phan share”. The orphan share may only consist of
18 the following:

19 “(A) shares attributable to hazardous sub-
20 stances that the allocator determines, on the
21 basis of information presented, to be specifically
22 attributable to identified but insolvent or de-
23 funct responsible parties who are not affiliated
24 with any allocation party;

1 “(B) the difference between the aggregate
 2 shares that the allocator determines, on the
 3 basis of the information presented, are specifi-
 4 cally attributable to contributors of municipal
 5 solid waste subject to the limitations in section
 6 107(a)(5)(D) of this title, and the share actu-
 7 ally assumed by those parties in any settle-
 8 ments with the United States pursuant to sub-
 9 section 122(g) of this title, including the fair
 10 market value of in-kind services provided by a
 11 municipality; and

12 “(C) the difference between the aggregate
 13 share that the allocator determines, on the
 14 basis of information presented, is specifically
 15 attributable to parties with a limited ability to
 16 pay response costs and the share actually as-
 17 sumed by those parties in any settlements with
 18 the United States pursuant to subsection
 19 122(b) of this title.

20 The orphan share shall not include shares attrib-
 21 utable to hazardous substances that the allocator
 22 cannot attribute to any identified party. Such shares
 23 shall be distributed among the allocation parties.

24 “(e) FUNDING OF ORPHAN SHARES.—From funds
 25 available in the Fund in any given fiscal year, and without

1 further appropriation action, the President shall make re-
 2 imbursements from the Fund, to eligible parties for costs
 3 incurred and equitably attributable to orphan shares de-
 4 termined pursuant to this section, provided that Fund fi-
 5 nancing of orphan shares shall not exceed \$300,000,000
 6 in any fiscal year. Reimbursements made under this sub-
 7 section shall be subject to such terms and conditions as
 8 the President may prescribe.

9 “(f) TIMING.—The allocator shall provide the report
 10 required by subsection (d)(1) of this section to the alloca-
 11 tion parties and the Administrator within 180 days of the
 12 issuance of the list of parties pursuant to subsection
 13 (c)(4)(B) of this section. Upon request, for good cause
 14 shown, the Administrator may grant the allocator addi-
 15 tional time to complete the allocation, not to exceed 90
 16 days.

17 “(g) SETTLEMENT FOLLOWING ALLOCATION.—

18 “(1) OBLIGATIONS OF THE UNITED STATES.—

19 The President will accept a timely offer of settle-
 20 ment from a party based on the share determined by
 21 the allocator, if it includes appropriate premia and
 22 other terms and conditions of settlement, unless the
 23 Administrator, with the concurrence of the Attorney
 24 General of the United States, determines that a set-
 25 tlement based on the allocator’s determinations

1 would not be fair, reasonable, and in the public in-
2 terest. The Administrator and the Attorney General
3 shall seek to make any such determination within 60
4 days from the date of issuance of the allocator's re-
5 port. The determinations of the Administrator and
6 the Attorney General shall not be judicially
7 reviewable.

8 “(2) If the Administrator and the Attorney
9 General determine not to settle on the basis of the
10 allocation, they shall provide the allocation parties
11 and members of the affected community with a writ-
12 ten explanation of the Administrator's determina-
13 tion. If the Administrator and the Attorney General
14 make such a determination, the parties who are will-
15 ing to settle on the basis of the allocation are enti-
16 tled to a consultation with an official appointed by
17 the President, to present any objections to the deter-
18 mination, within 60 days after the determination.

19 “(3) Settlements based on allocated shares shall
20 include—

21 “(A) a waiver of contribution rights
22 against all parties who are potentially respon-
23 sible parties for the response action;

24 “(B) covenants not to sue, consistent with
25 the provisions of section 122(f) of this title, and

1 provisions regarding performance or adequate
2 assurance of performance of response actions
3 addressed in the settlement;

4 “(C) a premium that compensates for the
5 United States’ litigation risk with respect to po-
6 tentially responsible parties who have not re-
7 solved their liability to the United States, ex-
8 cept that no such premium shall apply if all
9 parties settle or the settlement covers one 100
10 percent of response costs;

11 “(D) contribution protection, consistent
12 with sections 113(f) and 122(g) of this title, re-
13 garding matters addressed in the settlement.
14 Such settlement does not discharge any of the
15 other potentially responsible parties unless its
16 terms so provide, but it reduces the potential li-
17 ability of the others by the amount of the settle-
18 ment; and

19 “(E) provisions through which the settling
20 parties shall receive reimbursement from the
21 Fund for any response costs incurred by such
22 parties in excess of the aggregate of their allo-
23 cated share and any premia required by the set-
24 tlement. Such right to reimbursement shall not
25 be contingent on the United States’ recovery of

1 response costs from any responsible person not
2 a party to any settlement with the United
3 States.

4 “(4) The President shall report annually to
5 Congress on the administration of the allocation
6 scheme, and provide information comparing alloca-
7 tion results with actual settlements at multiparty fa-
8 cilities.

9 “(5) The provisions of this section shall not
10 apply to any offer of settlement made after com-
11 mencement of litigation by the United States against
12 the offering party under section 107 of this title.

13 “(h) AUTHORIZATION OF REIMBURSEMENT.—In any
14 settlement in which a party agrees to perform response
15 work in excess of its share, the Administrator shall have
16 authority in entering the settlement to confer a right of
17 reimbursement on the settling party pursuant to such pro-
18 cedures as the Administrator may prescribe.

19 “(i) POST-SETTLEMENT LITIGATION.—

20 “(1) IN GENERAL.—The United States may
21 commence an action under section 107 against any
22 person who has not resolved its liability to the Unit-
23 ed States following allocation, on or after 60 days
24 following issuance of the allocator’s report. In any
25 such action, the potentially responsible parties shall

1 be liable for all unrecovered response costs, including
2 any federally-funded orphan share identified in ac-
3 cordance with subsection (d)(4). Defendants in any
4 such action may implead any allocation party who
5 did not resolve its liability to the United States. The
6 Administrator and the Attorney General shall issue
7 guidelines to ensure that the relief sought against de
8 minimis parties under principles of joint and several
9 liability will not be grossly disproportionate to their
10 contribution to the facility. The application of such
11 guidelines is committed to the discretion of the Ad-
12 ministrator and the Attorney General.

13 “(2) In commencing any action under section
14 107 following allocation, the Attorney General must
15 certify, in the complaint, that the United States has
16 been unable to reach a settlement that would be in
17 the best interests of the United States.

18 “(3) ADMISSIBILITY OF ALLOCATOR’S RE-
19 PORT.—The allocator’s report shall not be admissi-
20 ble in any court with respect to a claim brought by
21 or against the United States, except in its capacity
22 as a nonsettling potentially responsible party, or for
23 the determination of liability. The allocator’s report,
24 subject to the rules and discretion of the court, may
25 be admissible solely for the purpose of assisting the

1 court in making an equitable allocation of response
2 costs among the relative shares of nonsettling liable
3 parties.

4 ~~“(4) OTHER AUTHORITIES UNAFFECTED.—~~

5 Nothing in this section limits or in any way affects
6 the exercise of the President’s authority pursuant to
7 sections 103, 104, 105, or 106.

8 ~~“(5) COSTS.—~~

9 ~~“(A) The costs of implementing the alloca-~~
10 ~~tion procedure set forth in this section, includ-~~
11 ~~ing reasonable fees and expenses of the allo-~~
12 ~~cator, shall be considered necessary costs of re-~~
13 ~~sponse.~~

14 ~~“(B) The costs attributable to any funding~~
15 ~~of orphan shares identified by the allocator pur-~~
16 ~~suant to subsection (d)(4) also shall be consid-~~
17 ~~ered necessary costs of response, and shall be~~
18 ~~recoverable from liable parties who do not re-~~
19 ~~solve their liability on the basis of the alloca-~~
20 ~~tion.~~

21 ~~“(6) REJECTION OF SHARE DETERMINATION.—~~

22 In any action by the United States under this title,
23 if the United States has rejected an offer of settle-
24 ment that is consistent with subsections (g)(1) and
25 (g)(3) of this section and was presented to the Unit-

1 ed States prior to the commencement of the action;
 2 the offeror shall be entitled to recover from the
 3 United States the offeror's reasonable costs of de-
 4 fending the action after the making of the offer, in-
 5 cluding reasonable attorneys' fees, if the ultimate
 6 resolution of liability or allocation of costs with re-
 7 spect to the offeror, taking into account all settle-
 8 ments and reimbursements with respect to the facil-
 9 ity other than those attributable to insurance or in-
 10 demnification, is as or more favorable to the offeror
 11 than the offer based on the allocation.

12 “(j) PROCEDURES.—The Administrator shall further
 13 define the procedures of this section by regulation or guid-
 14 ance, after consultation with the Attorney General.”.

15 **TITLE V—REMEDY SELECTION AND** 16 **CLEANUP STANDARDS**

17 **SEC. 501. PURPOSES AND OBJECTIVES.**

18 The purposes and objectives of this title are to—

19 (a) ensure that remedial actions under the Act
 20 are protective of human health and the environment;

21 (b) provide consistent and equivalent protection
 22 to all communities affected by facilities subject to re-
 23 medial action; and,

24 (c) ensure that the national goals, national ge-
 25 neric cleanup levels, and the national risk protocol

1 required by this title are developed through a proc-
 2 ess based on substantial public input and, where ap-
 3 propriate, on consensual decisionmaking.

4 **SEC. 502. CLEANUP STANDARDS AND LEVELS.**

5 Section 121(d)(1)—(2)(C)(i) of the Act (42 U.S.C.
 6 9621(d)) is amended to read as follows:

7 “(d) DEGREE OF CLEANUP.—

8 “(1) PROTECTION OF HUMAN HEALTH AND
 9 THE ENVIRONMENT.—A remedial action selected
 10 under this section or otherwise required or agreed to
 11 by the President under this Act shall be protective
 12 of human health and the environment. In order to
 13 provide consistent protection to all communities, the
 14 Administrator shall promulgate national goals to be
 15 applied at all facilities subject to remedial action
 16 under this Act.

17 “(2) GENERIC CLEANUP LEVELS.—The Admin-
 18 istrator shall promulgate, as appropriate, national
 19 generic cleanup levels for specific hazardous sub-
 20 stances, pollutants, or contaminants, based on the
 21 national goals established in paragraph (1). A clean-
 22 up level shall—

23 “(A) reflect reasonably anticipated future
 24 land uses;

1 “(B) reflect other variables which can be
2 easily measured at a facility and whose effects
3 are scientifically well-understood to vary on a
4 site-specific basis; and

5 “(C) represent concentration levels below
6 which a response action is not required.

7 “(3) SITE-SPECIFIC METHODS TO ESTABLISH
8 CLEANUP LEVELS.—Notwithstanding the promulga-
9 tion of national generic cleanup levels under sub-
10 section (d)(2) and nationally-approved generic rem-
11 edies under subsection (b)(4) of this section, the Ad-
12 ministrator may, as appropriate, rely on a site-spe-
13 cific risk assessment to determine the proper level of
14 cleanup at a facility, based on the national goals es-
15 tablished in paragraph (1) and the reasonably antici-
16 pated future land uses at the facility. This may
17 occur if a national generic cleanup level has not been
18 developed or to account for particular characteristics
19 of a facility or its surroundings. In establishing site-
20 specific cleanup levels, the President shall consider
21 the views of the affected community in accordance
22 with section 117 of this Act.

23 “(4) RISK ASSESSMENT.—The Administrator
24 shall promulgate a national risk protocol for con-
25 ducting risk assessments based on realistic assump-

1 tions. After promulgation, risk assessments underly-
2 ing the degree of cleanup and remedy selection proc-
3 esses shall use the national risk protocol.

4 “(5) FEDERAL AND STATE LAWS.—

5 “(A) A remedial action shall be required to
6 comply with the substantive requirements of—

7 “(i) any standard, requirement, cri-
8 terion, or limitation under any federal en-
9 vironmental or facility siting law that the
10 President determines is suitable for appli-
11 cation to the remedial action at the facil-
12 ity; and

13 “(ii) any promulgated standard, re-
14 quirement, criterion, or limitation under
15 any state environmental law specifically
16 addressing remedial action that is adopted
17 for the purpose of protecting human health
18 or the environment with the best available
19 scientific evidence through a public process
20 where such a law is more stringent than
21 any such federal cleanup standard, require-
22 ment, criterion, or limitation, or the clean-
23 up level determined in accordance with the
24 requirements of this section.

1 “(B) Procedural requirements of federal
2 and state standards, requirements, criteria, or
3 limitations, including but not limited to permit-
4 ting requirements, shall not apply to response
5 actions conducted on-site. In addition, compli-
6 ance with such laws shall not be required with
7 respect to return, replacement, or redisposal of
8 contaminated media or residuals of contami-
9 nated media into the same medium in or very
10 near existing areas of contamination on-site.

11 “(C) The President may select a remedial
12 action meeting the requirements of paragraph
13 (1) that does not attain a level or standard of
14 control at least equivalent to the federal or
15 State standards, requirements, criteria, or limi-
16 tations as required by paragraph (A), if the
17 President finds that—

18 “(i) the remedial action selected is
19 only part of a total remedial action that
20 will attain such level or standard of control
21 when completed;

22 “(ii) compliance with such require-
23 ment at that facility will result in greater
24 risk to human health and the environment
25 than alternative options;

1 “(iii) compliance with such require-
2 ments is technically impracticable from an
3 engineering perspective;

4 “(iv) a generic remedy under section
5 (b)(4) has been selected for the facility;

6 “(v) the remedial action selected will
7 attain a standard of performance that is
8 equivalent to that required under the
9 standard, requirement, criterion, or limita-
10 tion identified under (A)(i) and (A)(ii)
11 through use of another approach;

12 “(vi) with respect to a State standard,
13 requirement, criterion, or limitation, the
14 State has not consistently applied (or dem-
15 onstrated the intention to consistently
16 apply) the standard, requirement, criterion,
17 or limitation in similar circumstances at
18 other remedial actions within the State; or

19 “(vii) in the case of a remedial action
20 to be undertaken solely under section 104
21 using the Fund, a selection of a remedial
22 action that attains such level or standard
23 of control will not provide a balance be-
24 tween the need for protection of public
25 health and welfare and the environment at

1 the facility under consideration, and the
2 availability of amounts from the Fund to
3 respond to other facilities which present or
4 may present a threat to public health or
5 welfare or the environment, taking into
6 consideration the relative immediacy of
7 such threat.

8 The President shall publish such findings, to-
9 gether with an explanation and appropriate doc-
10 umentation.”.

11 **SEC. 503. REMEDY SELECTION.**

12 Section 121(b) of the Act (42 U.S.C. 9621(b) is
13 amended to read as follows:

14 “(b) GENERAL RULES.—

15 “(1) SELECTION OF PROTECTIVE REMEDIES.—

16 Remedies selected at individual facilities shall be
17 protective of human health and the environment.
18 Whether a response action requires remediation
19 through treatment, containment, a combination of
20 treatment and containment, or other means, shall be
21 determined through the evaluation of remedial alter-
22 natives.

23 “(2) LAND USE.—In selecting a remedy, the

24 President shall take into account the reasonably an-

1 anticipated future uses of land at a facility as required
2 by this Act.

3 ~~“(3) APPROPRIATE REMEDIAL ACTION.—~~

4 ~~“(A) The President shall identify and se-~~
5 ~~lect an appropriate remedy utilizing treatment,~~
6 ~~containment, other remedial measures, or any~~
7 ~~combination thereof, that is protective of~~
8 ~~human health and the environment and~~
9 ~~achieves the degree of cleanup determined~~
10 ~~under section 121(d), taking into account the~~
11 ~~following factors—~~

12 ~~“(i) the effectiveness of the remedy;~~

13 ~~“(ii) the long-term reliability of the~~
14 ~~remedy, that is, its capability to achieve~~
15 ~~long-term protection of human health and~~
16 ~~the environment;~~

17 ~~“(iii) any risk posed by the remedy to~~
18 ~~the affected community, to those engaged~~
19 ~~in the cleanup effort, and to the environ-~~
20 ~~ment;~~

21 ~~“(iv) the acceptability of the remedy~~
22 ~~to the affected community; and~~

23 ~~“(v) the reasonableness of the cost of~~
24 ~~the remedy in relation to the preceding~~
25 ~~factors (i) and (iv).~~

1 “(B) INNOVATIVE REMEDIES.—If an oth-
2 erwise appropriate treatment remedy is avail-
3 able only at a disproportionate cost and the
4 President determines that an appropriate treat-
5 ment remedy is likely to become available with-
6 in a reasonable period of time, the President
7 may select an interim containment remedy. A
8 selected interim containment remedy shall in-
9 clude adequate monitoring to ensure the contin-
10 ued integrity of the containment system. If an
11 appropriate treatment remedy becomes available
12 within that period of time, that remedy shall be
13 required.

14 “(C) HOT SPOTS.—In evaluating a facility
15 for a permanent containment remedy, if the
16 President determines, based on standard site
17 investigation, that a discrete area within a facil-
18 ity is a “hot spot” (as defined in this para-
19 graph), the President shall select a remedy for
20 the hot spot with a preference for treatment,
21 unless he determines, based on treatability
22 studies and other information, that no treat-
23 ment technology exists or such technology is
24 only available at a disproportionate cost. In
25 such instances, the President shall select an in-

1 interim containment remedy for a hot spot sub-
2 ject to adequate monitoring to ensure its con-
3 tinued integrity and shall review the interim
4 containment remedy within five years to deter-
5 mine whether an appropriate treatment remedy
6 for the hot spot is available. For purposes of
7 this paragraph, the term “hot spot” means a
8 discrete area within a facility that contains haz-
9 ardous substances that are highly toxic or high-
10 ly mobile, cannot be reliably contained, and
11 present a significant risk to human health or
12 the environment should exposure occur.

13 “(4) GENERIC REMEDIES.—In order to stream-
14 line the remedy selection process, and to facilitate
15 rapid voluntary action, the President shall establish,
16 taking into account the factors enumerated in sub-
17 section (b)(3)(A), cost-effective generic remedies for
18 categories of facilities, and expedited procedures that
19 include community involvement for selecting generic
20 remedies at an individual facility. To be eligible for
21 selection at a facility, a generic remedy shall be pro-
22 tective of human health and the environment at that
23 facility. When appropriate, the President may select
24 a generic remedy without considering alternative
25 remedies.”.

1 **SEC. 504. MISCELLANEOUS AMENDMENTS TO SECTION 121.**

2 (a) Section 121(c) of the Act (~~42 U.S.C. 9621(c)~~)
3 is amended by striking out the word “initiation”, and in-
4 serting in lieu thereof the phrase “completion of all phys-
5 ical on-site construction”.

6 (b) Section 121(d) of the Act is further amended
7 by—

8 (1) redesignating paragraph ~~(2)(C)(ii)~~ as para-
9 graph “(6)(A)”;

10 (2) redesignating paragraph ~~(2)(C)(iii)~~ as para-
11 graph “(6)(B)”;

12 (3) striking “clauses (iii) and (iv)” in redesi-
13 gnated paragraph ~~(6)(A)~~ and inserting “subpara-
14 graph (B)”;

15 (4) striking paragraph ~~(2)(C)(iv)~~;

16 (5) redesignating paragraph ~~(3)~~ as paragraph
17 “(7)” and amending it to read as follows:

18 “(7) In the case of any removal or remedial action
19 involving the transfer of any hazardous substance or pol-
20 lutant or contaminant off-site, such hazardous substance
21 or pollutant or contaminant and shall be transferred to
22 a facility which is authorized under applicable Federal and
23 State law to receive such hazardous substance or pollutant
24 or contaminant and is in compliance with such applicable
25 Federal and State law. Such substance or pollutant or
26 contaminant may be transferred to a land disposal facility

1 permitted under subtitle C of the Solid Waste Disposal
 2 Act only if the President determines that both of the fol-
 3 lowing requirements are met:

4 “(A) The unit to which the hazardous sub-
 5 stance or pollutant or contaminant is transferred is
 6 not releasing any hazardous waste, or constituent
 7 thereof, into the groundwater or surface water or
 8 soil.

9 “(B) All such releases from other units at the
 10 facility are being controlled by a corrective action
 11 program approved by the Administrator under sub-
 12 title C of the Solid Waste Disposal Act.

13 The President shall notify the owner or operator of such
 14 facility of determinations made under this paragraph.”;
 15 and

16 (6) striking paragraph (4).

17 (c) Section 121(e) of the Act (42 U.S.C. 9621(e)) is
 18 amended by—

19 (1) in paragraph (1) inserting in the first sen-
 20 tence “or permit application” before “shall be re-
 21 quired”; and by adding at the end thereof the follow-
 22 ing: “Furthermore, no Federal, State or local permit
 23 or permit application shall be required for one-site
 24 or off-site activities conducted under section
 25 311(b),”; and

1 ~~(2) striking paragraph (2).~~

2 ~~(d) Section 121(f) of the Act (42 U.S.C. 9621(f)) is~~
 3 ~~amended by adding after paragraph (3) (as amended by~~
 4 ~~this Act) the following new paragraph:~~

5 ~~“(4) A State may enforce only those Federal or State~~
 6 ~~legally applicable standards, requirements, criterion, or~~
 7 ~~limitations to which the Administrator has determined the~~
 8 ~~remedial action is required to conform under this Act.~~
 9 ~~Where the parties agree, the consent decree may provide~~
 10 ~~for administrative enforcement. Each consent decree shall~~
 11 ~~also contain stipulated penalties for violations of the de-~~
 12 ~~cree in an amount not to exceed \$25,000 per day. Such~~
 13 ~~stipulated penalties shall not be construed to impair or~~
 14 ~~affect the authority of the court to order compliance with~~
 15 ~~the specific terms of any such decree.”.~~

16 **SEC. 505. RESPONSE AUTHORITIES.**

17 ~~(a) Section 104(b)(1) of the Act (42 U.S.C.~~
 18 ~~9604(b)(1)) is amended by—~~

19 ~~(1) inserting “actions,” before “studies”;~~

20 ~~(2) striking “, to recover the costs thereof, and”~~
 21 ~~and inserting “or”; and~~

22 ~~(3) striking the “.” after “Act” and inserting~~
 23 ~~“and shall be entitled to recover the costs thereof.”.~~

24 ~~(b) Section 104(j) of the Act (42 U.S.C. 9604(j)) is~~
 25 ~~amended by—~~

1 (1) in paragraph (1) by striking “remedial”,
2 and inserting “response”;

3 ~~(2) striking paragraph (2);~~

4 (3) redesignating paragraph (3) as paragraph
5 “(2)” and striking “estate” and inserting “prop-
6 erty”; and

7 (4) by inserting after paragraph (2) (as redesign-
8 ated by this Act) the following new paragraph:

9 ~~“(4) DISPOSAL AUTHORITY.—~~The President is au-
10 thorized to dispose of any interest in real property ac-
11 quired for use by the Administrator under this subsection
12 by sale, exchange, donation or otherwise and any such in-
13 terest in real property shall not be subject to any of the
14 provisions of section 120 except the notice provisions of
15 section 120(h)(1). Any moneys received by the President
16 pursuant to this subparagraph shall be deposited in the
17 Fund.”.

18 **SEC. 506. REMOVAL ACTIONS.**

19 (a) Section 104(c)(1) of the Act is amended in sub-
20 paragraph (C) as follows:

21 (1) strike “\$2,000,000” and insert
22 “\$6,000,000”;

23 (2) strike “12 months” and insert “three
24 years”; and

1 (3) strike “consistent with the remedial action
2 to be taken” and insert “not inconsistent with any
3 remedial action that has been selected or is antici-
4 pated at the time of the removal action.”;

5 (b) Section 117 of the Act is amended by adding after
6 subsection (k) (as added by this Act) the following new
7 subsection:

8 “(1) REMOVAL ACTIONS.—Whenever the planning
9 period for a removal action is expected to be greater than
10 six months, the Administrator shall provide the commu-
11 nity with notice of the anticipated removal action and a
12 public comment period of no less than thirty days.”.

13 **SEC. 507. TRANSITION.**

14 The provisions of this title shall become effective on
15 the date of enactment of this Act and shall apply to all
16 response actions for which a Record of Decision or other
17 decision document is signed after the date of enactment
18 of the Act.

19 **TITLE VI—MISCELLANEOUS**

20 **SEC. 601. INTERAGENCY AGREEMENTS AT MIXED OWNER-**
21 **SHIP AND MIXED RESPONSIBILITY FACILI-**
22 **TIES.**

23 Section 120(e) of the Act (42 U.S.C. 9620(e)) is
24 amended by—

1 (a) inserting after paragraph (3) the following
2 new paragraph:

3 “(4) A provision allowing for the participation
4 of other responsible parties in the response action;
5 and

6 (b) inserting after paragraph (6) the following
7 new paragraphs:

8 “(7) EXCEPTION TO REQUIRED ACTION.—No
9 department, agency, and instrumentality of the
10 United States that owns or operates a facility over
11 which the department, agency, or instrumentality ex-
12 ercised no regulatory or other control over activities
13 that directly or indirectly resulted in a release or
14 threat of a release of a hazardous substance shall be
15 subject to the requirements of paragraphs (1)
16 through (6) except (5)(F) and (G) of this subsection
17 if the department, agency, or instrumentality dem-
18 onstrates to the satisfaction of the Administrator
19 that—

20 “(A) no department, agency, or instrumen-
21 tality was the primary or sole source or cause
22 of a release or threat of release of a hazardous
23 substance at the facility;

24 “(B) the activities either directly or indi-
25 rectly resulting in a release or threat of a re-

1 lease of a hazardous substance at the facility
2 were pursuant to a statutory authority and oc-
3 curred prior to 1976; and

4 “(C) the person or persons primarily or
5 solely responsible for such release or threat of
6 release are financially viable, and capable of
7 performing or financing the response action at
8 the facility.

9 In the event the above conditions are not met, the
10 applicable terms of section 120(e) apply to the de-
11 partment, agency, or instrumentality of the United
12 States at the facility. Upon determination by the
13 Administrator that a department, agency, or instru-
14 mentality qualifies for the exception provided by this
15 paragraph, the head of such department, agency, or
16 instrumentality may exercise enforcement authority
17 pursuant under section 106 (in addition to any other
18 delegated authorities). To the extent a person who
19 has been issued an order under the authority of this
20 paragraph seeks reimbursement under the provisions
21 of section 106, the relevant department, agency, or
22 instrumentality, and not the Fund, shall be the
23 source of any appropriate reimbursement. If the Ad-
24 ministrator determines that the relevant department,
25 agency, or instrumentality has failed to seek the per-

1 formance of response actions by responsible parties
 2 within 12 months after the facility has been listed
 3 on the National Priorities List, the Administrator
 4 may void the exception provided by this paragraph
 5 and the applicable provisions of section 120(e) would
 6 apply to the department, agency or instrumentality
 7 at the facility.

8 **SEC. 602. TRANSFERS OF UNCONTAMINATED PROPERTY.**

9 Section 120(h)(4)(A) of the Act (42 U.S.C.
 10 9620(h)(4)(A)) is amended by striking the words “stored
 11 for one year or more,”.

12 **SEC. 603. AGREEMENTS TO TRANSFER BY DEED.**

13 Section 120(h) of the Act (42 U.S.C. 9620(h)) is
 14 amended by adding after paragraph (5) the following new
 15 paragraph:

16 “(6) AGREEMENTS TO TRANSFER BY DEED.—
 17 Nothing in this subsection shall be construed to pro-
 18 hibit the head of the department, agency, or instru-
 19 mentality of the United States from entering into an
 20 agreement to transfer by deed real property or facili-
 21 ties prior to the entering of such deed.”.

22 **SEC. 604. ALTERNATIVE OR INNOVATIVE TREATMENT**
 23 **TECHNOLOGIES.**

24 Section 111(a) of the Act of 1980 is amended by add-
 25 ing after paragraph (6) the following new paragraph:

1 “(7) ~~ALTERNATIVE OR INNOVATIVE TREAT-~~
2 ~~MENT TECHNOLOGIES.~~—

3 “(A) When a party potentially liable under
4 this Act undertakes a response action pursuant
5 to an administrative order or consent decree,
6 and employs an alternative or innovative tech-
7 nology that fails to achieve a level of response
8 required under this Act, the Administrator may
9 use the Fund to reimburse no more than 50
10 percent of response costs incurred by the poten-
11 tially liable party in taking other actions ap-
12 proved by the Administrator to achieve these
13 required levels of response. The Administrator
14 shall issue guidance on the procedures and cri-
15 teria to be used in determining whether a reme-
16 dial technology constitutes an alternative or in-
17 novative technology for purposes of this sub-
18 section, and the appropriate level of funding for
19 response activities that are necessary to achieve
20 a level of response required under this Act. The
21 Administrator shall review and update such
22 guidance, as appropriate.”.

23 **SEC. 605. DEFINITIONS.**

24 Section 101 of the Act (42 U.S.C. 9601)) is amended
25 by—

1 (a) in paragraph (1) striking the “.” after
2 “Act” and inserting “and includes the cost of en-
3 forcement activities related thereto.”;

4 (b) in paragraph (10)(H) striking “subject to”
5 and inserting “in compliance with”;

6 (c) in paragraph (14)) inserting after “Con-
7 gress” the phrase “, unless such waste contains a
8 substance that is listed under any other subpara-
9 graph of this paragraph”;

10 (d) in paragraph (20) by—

11 (1) in subparagraph (A) inserting after
12 “similar means to” the phrase “the United
13 States (or any department, agency, or instru-
14 mentality thereof), or”;

15 (2) in subparagraph (D) by inserting—

16 (A) after “does not include” the
17 phrase “the United States (or any depart-
18 ment, agency, or instrumentality thereof),
19 or”; and,

20 (B) before “any State” the phrase
21 “any department, agency, or instrumental-
22 ity of the United States, or”; and

23 (3) in subparagraph (D) by striking “a”
24 after “such” and inserting “department, agen-
25 cy, or instrumentality of the United States, or”;

1 (4) by adding after subparagraph (D) the
2 following new subparagraphs:

3 ~~“(E) The term ‘owner or operator’ shall~~
4 include a trust or estate, but does not include
5 a person who holds title to a vessel or facility
6 solely in the capacity as a fiduciary, provided
7 that such person—

8 ~~“(i) does not participate in the man-~~
9 agement of a vessel or facility operations
10 that result in a release or threat of release
11 of hazardous substances; and

12 ~~“(ii) complies with such other require-~~
13 ments as the Administrator may set forth
14 by regulation.

15 ~~“(F) The term ‘owner or operator’ shall~~
16 not include the United States or any depart-
17 ment, agency or instrumentality of the United
18 States or a conservator or receiver appointed by
19 a department, agency or instrumentality of the
20 United States, which acquired ownership or
21 control of a vessel or facility (or any right or
22 interest therein)—

23 ~~“(i) in connection with the exercise of~~
24 receivership or conservatorship authority
25 or the liquidation or winding up of the af-

1 fairs of any entity subject to a receivership
 2 or conservatorship, including any subsidi-
 3 ary thereof; or

4 “(ii) in connection with the exercise of
 5 any seizure or forfeiture authority; or

6 “(iii) pursuant to an act of Congress
 7 specifying the property to be acquired:

8 *Provided,* That the United States, or conserva-
 9 tor or receiver appointed by the United States
 10 does not participate in the management of the
 11 vessel or facility operations that result in a re-
 12 lease or threat of release of hazardous sub-
 13 stances and complies with such other require-
 14 ments as the Administrator may set forth by
 15 regulation.”;

16 (e) in paragraph (23) adding at the end of the
 17 paragraph the following “The terms ‘remove’ or ‘re-
 18 moval’ are not limited to emergency situations and
 19 include actions to address future or potential expo-
 20 sures and, provided such actions are consistent with
 21 the requirements of this Act, actions obviating the
 22 need for a remedial action.”;

23 (f) in paragraph (25) striking “related thereto”,
 24 and inserting “and oversight activities related there-

1 to when such activities are undertaken by the Presi-
2 dent.”;

3 (g) in paragraph (29) striking the “.” after
4 “Act” and inserting “, except that the term “haz-
5 arduous substance” shall be substituted for the term
6 “hazardous waste” in the definitions of “disposal”
7 and “treatment.”;

8 (h) in paragraph (33) striking “; except that
9 the”, and inserting “, The”;

10 (i) adding after paragraph (38) the following
11 new paragraphs:

12 “(39) BONA FIDE PROSPECTIVE PURCHASER.—
13 The term ‘bona fide prospective purchaser’ means a
14 person who acquires ownership of a facility after en-
15 actment of this provision, and who can establish by
16 a preponderance of the evidence that—

17 “(A) all active disposal of hazardous sub-
18 stances at the facility occurred before that per-
19 son acquired the facility;

20 “(B) the person conducted a site audit of
21 the facility in accordance with commercially
22 reasonable and generally accepted standards
23 and practices. The Administrator shall have au-
24 thority to develop standards by guidance or reg-
25 ulation, or to designate standards promulgated

1 or developed by others, that satisfy this sub-
2 paragraph. In the case of property for residen-
3 tial or other similar use, a site inspection and
4 title search that reveal no basis for further in-
5 vestigation satisfy the requirements of this sub-
6 paragraph;

7 “(C) the person provided all legally re-
8 quired notices with respect to the discovery or
9 release of any hazardous substances at the fa-
10 cility;

11 “(D) the person exercised due care with re-
12 spect to hazardous substances found at the fa-
13 cility and took reasonably necessary steps to ad-
14 dress any release or threat of release of hazard-
15 ous substances and to protect human health
16 and the environment. The requirements of due
17 care and reasonably necessary steps with re-
18 spect to hazardous substances discovered at the
19 facility shall be conclusively established where
20 the person successfully completes a response ac-
21 tion pursuant to a State voluntary response
22 program, as defined in section 127 of this title;
23 and

24 “(E) the person provides full cooperation,
25 assistance, and facility access to those respon-

1 sible for response actions at the facility, includ-
2 ing the cooperation and access necessary for the
3 installation, integrity, operation, and mainte-
4 nance of any complete or partial response ac-
5 tion at the facility; and

6 “(F) the person is not affiliated with any
7 other person liable for response costs at the fa-
8 cility, through any direct or indirect familial re-
9 lationship, or any contractual, corporate, or fi-
10 nancial relationship other than that created by
11 the instruments by which title to the facility is
12 conveyed or financed.

13 “(40) FIDUCIARY.—

14 “(A) Except as provided in subparagraph
15 (B), the term ‘fiduciary’ means a person who
16 owns or controls property—

17 “(i) as a fiduciary within the meaning
18 of section 3(31) of the Employee Retire-
19 ment Income Security Act of 1974, or as
20 a trustee, executor, administrator, custo-
21 dian, guardian, conservator, or receiver
22 acting for the exclusive benefit of another
23 person; and

1 “(ii) who has not previously owned or
2 operated the property in a non-fiduciary
3 capacity.

4 “(B) The term ‘fiduciary’ does not include
5 any person described in subparagraph (A)—

6 “(i) who acquires ownership or control
7 of property to avoid the liability of such
8 person or any other person under this Act;
9 or

10 “(ii) who owns or controls property on
11 behalf of or for the benefit of a holder of
12 a security interest.

13 “(41) MUNICIPAL SOLID WASTE.—The term
14 ‘municipal solid waste’ means all waste materials
15 generated by households, including single and multi-
16 family residences, and hotels and motels. The term
17 also includes waste materials generated by commer-
18 cial, institutional, and industrial sources, to the ex-
19 tent such wastes (A) are essentially the same as
20 waste normally generated by households or (B) were
21 collected and disposed of with other municipal solid
22 waste or sewage sludge as part of normal municipal
23 solid waste collection services, and, regardless of
24 when generated, would be considered conditionally
25 exempt small quantity generator waste under section

1 3001(d) of the Solid Waste Disposal Act (42 U.S.C.
2 6921(d)). Examples of municipal solid waste include
3 food and yard waste, paper, clothing, appliances,
4 consumer product packaging, disposable diapers, of-
5 fice supplies, cosmetics, glass and metal food con-
6 tainers, elementary or secondary school science lab-
7 oratory waste, and household hazardous waste (such
8 as painting, cleaning, gardening, and automotive
9 supplies). The term ‘municipal solid waste’ does not
10 include combustion ash generated by resource recov-
11 ery facilities or municipal incinerators, or waste
12 from manufacturing or processing (including pollu-
13 tion control) operations not essentially the same as
14 waste normally generated by households.

15 “(42) MUNICIPALITY.—The term ‘municipality’
16 means a political subdivision of a State, including
17 cities, counties, villages, towns, townships, boroughs,
18 parishes, school districts, sanitation districts, water
19 districts, and other public entities performing local
20 governmental functions. The term also includes a
21 natural person acting in the capacity of an official,
22 employee, or agent of a municipality in the perform-
23 ance of governmental functions.

24 “(43) QUALIFIED HOUSEHOLD HAZARDOUS
25 WASTE COLLECTION PROGRAM.—The term ‘qualified

1 household hazardous waste collection program’
2 means a program established by an entity of the fed-
3 eral government, a state, municipality, or Indian
4 tribe that provides, at a minimum, for semiannual
5 collection of household hazardous wastes at acces-
6 sible, well-publicized collection points within the rel-
7 evant jurisdiction.

8 “(44) SEWAGE SLUDGE.—The term ‘sewage
9 sludge’ means solid, semisolid, or liquid residue re-
10 moved during the treatment of municipal waste
11 water, domestic sewage, or other waste water at or
12 by publicly-owned or federally-owned treatment
13 works.

14 “(45) SITE CHARACTERIZATION.—The term
15 ‘site characterization’ means an investigation that
16 determines the nature and extent of a release or po-
17 tential release of a hazardous substance, pollutant or
18 contaminant, and that includes an on-site evaluation
19 and sufficient testing, sampling and other field data
20 gathering activities to analyze whether there has
21 been a release or threat of a release of a hazardous
22 substance, pollutant or contaminant, and the health
23 and environmental risks posed by such a release or
24 threat of release. The investigation also may include
25 review of existing information (available at the time

1 of the review), an off-site evaluation, or other meas-
 2 ures as the Administrator deems appropriate.

3 ~~“(46) VOLUNTARY RESPONSE.—The term ‘vol-~~
 4 ~~untary response’ means a response action—~~

5 ~~“(A) undertaken and financed by a current~~
 6 ~~owner or prospective purchaser under a vol-~~
 7 ~~untary response program; and~~

8 ~~“(B) with respect to which the current~~
 9 ~~owner or prospective purchaser agrees to pay all~~
 10 ~~State oversight costs.”.~~

11 **SEC. 606. CONFORMING AMENDMENT.**

12 Section 126(a) of the Act ~~(42 U.S.C. 9626(a))~~ is
 13 amended by adding, after “section 104(i) (regarding
 14 health authorities),” the phrase “section 127 (regarding
 15 State authority), section 120 (regarding voluntary re-
 16 sponse actions),”.

17 **TITLE VII—FUNDING**

18 **SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

19 Section 111(a) of the Act is amended by striking
 20 “\$8,500,000,000 for the 5-year period beginning on Octo-
 21 ber 17, 1986, and not more than \$5,100,000,000 for the
 22 period commencing October 1, 1991, and ending Septem-
 23 ber 30, 1994” and inserting “\$9,600,000,000 for the pe-
 24 riod commencing October 1, 1994 and ending September
 25 30, 1999”.

1 **SEC. 702. ORPHAN SHARE FUNDING.**

2 Section 111(a) is amended by adding after paragraph
3 (7) (as added by this Act) the following new paragraph:

4 “(8) ORPHAN SHARE FUNDING.—Payment of
5 orphan shares pursuant to section 122a(e) of this
6 Act.”.

7 **SEC. 703. AGENCY FOR TOXIC SUBSTANCES AND DISEASE**
8 **REGISTRY.**

9 Section 111(m) of the Act is amended to read as fol-
10 low:

11 “(m) There shall be directly available to the Agency
12 for Toxic Substances and Disease Registry to be used for
13 the purpose of carrying out activities described in sub-
14 section (c)(4) of this section and section 104(i) of this Act
15 not less than \$80,000,000 per fiscal year for each of fiscal
16 years 1995, 1996, 1997, 1998, and 1999. Any funds so
17 made available which are not obligated by the end of the
18 fiscal year in which made available shall be returned to
19 the Fund.”.

20 **SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT,**
21 **AND DEMONSTRATION PROGRAMS.**

22 Section 111(n) of the Act is amended to read as fol-
23 lows:

24 “(1) SECTION 311(b).—For each of the fiscal
25 years 1995, 1996, 1997, 1998, and 1999, not more
26 than \$20,000,000 of the amounts available in the

1 Fund may be used for the purposes of carrying out
 2 the applied research, development, and demonstra-
 3 tion program for alternative or innovative tech-
 4 nologies and training program authorized under sec-
 5 tion 311(b) of this title (relating to research, devel-
 6 opment, demonstration) other than basic research.
 7 Such amounts shall remain available until expended.

8 “(2) SECTION 311(a).—From the amounts avail-
 9 able in the Fund, not more than the following
 10 amounts may be used for the purposes of section
 11 311(a) of this title (relating to hazardous substance
 12 research, demonstration, and training activities)—

13 “(A) For fiscal year 1995 \$40,000,000,

14 “(B) For fiscal year 1996 \$50,000,000,

15 “(C) For fiscal year 1997 \$55,000,000,

16 “(D) For fiscal year 1998 \$55,000,000,

17 “(E) For fiscal year 1999 \$55,000,000,

18 No more than 10 percent of such amounts shall be
 19 used for training under section 311(a) of this title
 20 for any fiscal year.

21 “(3) SECTION 311(d).—For each of the fiscal
 22 years 1995, 1996, 1997, 1998, and 1999, not more
 23 than \$5,000,000 of the amounts available in the
 24 Fund may be used for the purposes of section

1 311(d) of this title (relating to university hazardous
2 substance research centers).”.

3 **SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM**
4 **GENERAL REVENUES.**

5 Section 111(p)(1) of the Act is amended to read as
6 follows:

7 “(1) IN GENERAL.—The following sums are au-
8 thorized to be appropriated, out of any money in the
9 Treasury not otherwise appropriated, to the Hazard-
10 ous Substance Superfund:

11 “(A) For fiscal year 1995 \$250,000,000,

12 “(B) For fiscal year 1996 \$250,000,000,

13 “(C) For fiscal year 1997 \$250,000,000,

14 “(D) For fiscal year 1998 \$250,000,000,

15 “(E) For fiscal year 1999 \$250,000,000,

16 In addition there is authorized to be appropriated to
17 the Hazardous Substance Superfund for each fiscal
18 year an amount equal to so much of the aggregate
19 amount authorized to be appropriated under this
20 subsection (and paragraph (2) of section 131(b) of
21 this title) as has not been appropriated before the
22 beginning of the fiscal year involved.”.

23 **SEC. 706. ADDITIONAL LIMITATIONS.**

24 Section 111 of the Act is amended by adding after
25 subsection (p) the following new subsections:

1 “(q) ALTERNATIVE OR INNOVATIVE TREATMENT
 2 TECHNOLOGIES.—For each of the fiscal years 1995,
 3 1996, 1997, 1998, and 1999, not more than \$40,000,000
 4 of the amounts available in the Fund may be used for the
 5 purposes of subsection (a)(7) of this section (relating to
 6 alternative or innovative treatment technologies).-

7 “(r) CITIZEN INFORMATION AND ACCESS OF-
 8 FICES.—For each of the fiscal years 1995, 1996, 1997,
 9 1998, and 1999, not more than \$50,000,000 of the
 10 amounts available in the Fund may be used for the pur-
 11 poses of section 117(j) of this Act (relating to citizen in-
 12 formation and access offices).-

13 “(s) MULTIPLE SOURCES OF RISK DEMONSTRATION
 14 PROJECTS.—For the period commencing October 1, 1994
 15 and ending September 30, 1999, not more than
 16 \$30,000,000 of the amounts available in the Fund may
 17 be used for the purposes of section 117(k) of this Act (re-
 18 lating to multiple sources of risk demonstration
 19 projects).”-

20 **TITLE VIII—ENVIRONMENTAL INSURANCE**
 21 **RESOLUTION FUND**

22 **SEC. 801. SHORT TITLE.**

23 This title may be cited as the “Environmental Insur-
 24 ance Resolution and Equity Act of 1994”-

1 **SEC. 802. ENVIRONMENTAL INSURANCE RESOLUTION**
 2 **FUND.**

3 (a) ENVIRONMENTAL INSURANCE RESOLUTION
 4 FUND ESTABLISHED.—There is hereby established the
 5 Environmental Insurance Resolution Fund (hereinafter
 6 referred to as the “Resolution Fund”).

7 (b) OFFICES.—The principal office of the Resolution
 8 Fund shall be in the District of Columbia or at such other
 9 place as the Resolution Fund may from time to time pre-
 10 scribe.

11 (c) STATUS OF RESOLUTION FUND.—Except as ex-
 12 pressly provided in this title, the Resolution Fund shall
 13 not be considered an agency or establishment of the Unit-
 14 ed States. The members of the Board of Trustees shall
 15 not, by reason of such membership, be deemed to be offi-
 16 cers or employees of the United States.

17 (d) BOARD OF TRUSTEES.—

18 (1) IN GENERAL.—The Resolution Fund shall
 19 be administered by a Board of Trustees (Board).

20 (2) MEMBERSHIP.—The Board shall consist
 21 of—

22 (A) GOVERNMENTAL MEMBERS.—

23 (i) The Administrator of the Environ-
 24 mental Protection Agency.

25 (ii) The Attorney General of the Unit-
 26 ed States.

1 (B) PUBLIC MEMBERS.—Five public mem-
 2 bers appointed by the President not later than
 3 60 days after the date of enactment of this
 4 title, not less than two of whom shall represent
 5 insurers subject to section of the Inter-
 6 nal Revenue Code of 1986, and not less than
 7 two of whom shall represent eligible persons de-
 8 fined in subsection (g)(2)(A). The public mem-
 9 bers shall be citizens of the United States.

10 (C) EX-OFFICIO MEMBER.—The Secretary
 11 of the Treasury shall serve as an ex officio
 12 member of the Board.

13 (3) CHAIR.—The Chair of the Board shall be
 14 designated by the President from time to time from
 15 among the members described in paragraph (2)(A).
 16 No expenditure may be made, or other action taken,
 17 by the Resolution Fund without the concurrence of
 18 the Chair of the Board.

19 (4) COMPENSATION.—Governmental members
 20 of the Board shall serve without additional com-
 21 pensation. Public members of the Board shall, while
 22 attending meetings of the Board or while engaged in
 23 duties related to such meetings or other activities of
 24 the Board pursuant to this title, be entitled to re-
 25 ceive compensation at the rate of \$200 per day, in-

1 eluding travel time. While away from their homes or
2 regular places of business, members of the Board
3 shall be allowed travel and actual, reasonable and
4 necessary expenses to the same extent as officers of
5 the United States.

6 (5) TERM OF PUBLIC MEMBERS.—Public mem-
7 bers of the Board shall serve for a term of 5 years,
8 except that such members may be removed by the
9 President for any reason at any time. A public mem-
10 ber whose term has expired may continue to serve
11 on the Board until such time as the President ap-
12 points a successor. The President may reappoint a
13 public member of the Board, but no such member
14 may consecutively serve more than two terms.

15 (6) VACANCIES.—A vacancy on the Board shall
16 be filled in the same manner as the original appoint-
17 ment, except that such appointment shall be for the
18 balance of the unexpired term of the vacant position.

19 (7) QUORUM.—Four members of the Board
20 shall constitute a quorum for the conduct of busi-
21 ness.

22 (8) MEETINGS.—The Board shall meet not less
23 than quarterly at the call of the Chair. Meetings of
24 the Board shall be open to the public unless the
25 Board, by a majority vote of members present in

1 open session, determines that it is necessary or ap-
2 propriate to close a meeting. The Chair shall provide
3 at least 10 days notice of a meeting by publishing
4 a notice in the Federal Register and such notice
5 shall indicate whether it is expected that the Board
6 will consider closing all or a portion of the meeting.
7 Nothing in this paragraph shall be construed to
8 apply to informal discussions or meetings among
9 Board members.

10 ~~(c) OFFICERS AND EMPLOYEES.—~~

11 ~~(1) CHIEF EXECUTIVE OFFICER; CHIEF FINAN-~~
12 ~~CIAL OFFICER.—~~

13 ~~(A) The Resolution Fund shall have a~~
14 ~~Chief Executive Officer appointed by the Board~~
15 ~~who shall exercise any authority of the Resolu-~~
16 ~~tion Fund under such terms and conditions as~~
17 ~~the Board may prescribe.~~

18 ~~(B) The Resolution Fund shall have a~~
19 ~~Chief Financial Officer appointed by the Board.~~

20 ~~(2) COMPENSATION.—No officer or employee of~~
21 ~~the Resolution Fund may be compensated by the~~
22 ~~Resolution Fund at an annual rate of pay which ex-~~
23 ~~ceeds the rate of basic pay in effect from time to~~
24 ~~time for level I of the Executive Schedule under sec-~~
25 ~~tion 5312 of title 5, United States Code. No officer~~

1 or employee of the Resolution Fund, other than a
2 member of the Board, may receive any salary or
3 other compensation from any source other than the
4 Resolution Fund for services rendered during the pe-
5 riod of employment by the Resolution Fund.

6 (3) ~~POLITICAL TEST OR QUALIFICATION.~~—No
7 political test or qualification shall be used in select-
8 ing, appointing, promoting, or taking other person-
9 nel actions with respect to officers, agents, and em-
10 ployees of the Resolution Fund.

11 (4) ~~ASSISTANCE BY FEDERAL AGENCIES.~~—The
12 Attorney General, the Secretary of the Treasury,
13 and the Administrator of the Environmental Protec-
14 tion Agency, may to the extent practicable and fea-
15 sible, and in their sole discretion, make personnel
16 and other resources available to the Resolution
17 Fund. Such personnel and resources may be pro-
18 vided on a reimbursable basis, and any personnel so
19 provided shall not be considered employees of the
20 Resolution Fund for purposes of paragraph (2).

21 (f) ~~POWERS OF RESOLUTION FUND.~~—Notwithstand-
22 ing any other provision of law, except as provided in this
23 title or as may be hereafter enacted by the Congress ex-
24 pressly in limitation of the provisions of this paragraph,
25 the Resolution Fund shall have power—

1 (1) to have succession until dissolved by Act of
2 Congress;

3 (2) to make and enforce such bylaws, rules and
4 regulations as may be necessary or appropriate to
5 carry out the purposes of this title;

6 (3) to make and perform contracts, agreements,
7 and commitments;

8 (4) to settle, adjust, and compromise, and with
9 or without consideration or benefit to the Resolution
10 Fund release or waive in whole or in part, in ad-
11 vance or otherwise, any claim, demand, or right of,
12 by, or against the Resolution Fund;

13 (5) to sue and be sued, complain and defend, in
14 any State, Federal or other court;

15 (6) to determine its necessary expenditures and
16 the manner in which the same shall be incurred, al-
17 lowed, and paid, and appoint, employ, and fix and
18 provide for the duties, compensation and benefits of
19 officers, employees, attorneys, and agents, all of
20 whom shall serve at the pleasure of the Board;

21 (7) to invest funds, through the Secretary of
22 the Treasury, in interest bearing securities of the
23 United States suitable to the needs of the Resolution
24 Fund: *Provided*, That interest earned on such invest-

1 ments shall be retained by the Resolution Fund and
2 used consistent with the purposes of this title;

3 ~~(8)~~ to hire or accept the voluntary services of
4 consultants, experts, advisory boards, and panels to
5 aid the Resolution Fund in carrying out the pur-
6 poses of this title; and

7 ~~(9)~~ to take such other actions as may be nec-
8 essary to carry out the responsibilities of the Resolu-
9 tion Fund under this title. Nothing in this sub-
10 section or any other provision of this title shall be
11 construed to permit the Resolution Fund to issue
12 any evidence of indebtedness or otherwise borrow
13 money.

14 ~~(g)~~ RESOLUTION OF DISPUTES BETWEEN INSURED
15 AND INSURERS.—

16 ~~(1)~~ IN GENERAL.—The Resolution Fund shall
17 offer a comprehensive resolution described in this
18 subsection with respect to all eligible costs of an eli-
19 gible person at eligible sites.

20 ~~(2)~~ DEFINITIONS.—

21 ~~(A)~~ ELIGIBLE PERSON.—For purposes of
22 this subsection, the term “eligible person”
23 means any individual, firm, corporation, asso-
24 ciation, partnership, consortium, joint venture,
25 commercial entity or governmental unit (includ-

1 ing any predecessor in interest or any subsidi-
2 ary thereof) that satisfies the following criteria:

3 (i) STATUS AS POTENTIALLY RESPON-
4 SIBLE PARTY.—An eligible person—

5 (I) shall have been named at any
6 time as a potentially responsible party
7 pursuant to the Comprehensive Envi-
8 ronmental Response, Compensation
9 and Liability Act with respect to an
10 eligible site on the National Priority
11 List in connection with a hazardous
12 substance that was disposed of on or
13 before December 31, 1985; or

14 (II) is or was liable, or alleged to
15 be liable, at any time for removal (as
16 defined in section 101(23) of the
17 Comprehensive Environmental Re-
18 sponse, Compensation and Liability
19 Act (42 U.S.C. 9601(23)) at any eligi-
20 ble site in connection with a hazard-
21 ous substance that was disposed of on
22 or before December 31, 1985.

23 (ii) INSURANCE COVERAGE.—An eligi-
24 ble person shall have demonstrated, to the
25 satisfaction of the Resolution Fund, that

1 such person had entered into a valid con-
2 tract for comprehensive general liability
3 (including broad form liability, general li-
4 ability, commercial general liability, and
5 excess or umbrella coverage) or commercial
6 multi-peril (including broad form property,
7 commercial package, special multi-peril,
8 and excess or umbrella coverage) insurance
9 coverage—

10 (I) for any seven years in any
11 consecutive 14 year period prior to
12 January 1, 1986; or

13 (II) in the case of a person that
14 has been in existence for less than 14
15 years prior to January 1, 1986, for at
16 least one-half of such years of exist-
17 ence.

18 For purposes of this clause, a valid con-
19 tract for insurance shall not include any
20 contract for insurance with respect to
21 which a person has entered into a settle-
22 ment with an insurer providing, or where
23 a judgment has provided, that the contract
24 has been satisfied and that such person

1 has no right to make any further claims
2 under such contract.

3 ~~(B) ELIGIBLE COSTS.—~~

4 ~~(i) IN GENERAL.—~~For purposes of
5 this subsection, the term “eligible costs”
6 means costs described in clause ~~(ii)~~ or ~~(iii)~~
7 incurred with respect to a hazardous sub-
8 stance that was disposed of on or before
9 December 31, 1985—

10 ~~(I)~~ for which an eligible person
11 has not been reimbursed; or

12 ~~(II)~~ for which an eligible person
13 has been reimbursed and that are the
14 subject of a dispute between the eligi-
15 ble person and an insurer.

16 ~~(ii) NPL SITES.—~~With respect to an
17 eligible site described in subparagraph
18 ~~(C)(i)~~, eligible costs means costs described
19 in clause ~~(i)~~—

20 ~~(I)~~ of response (as defined in sec-
21 tion 101(25) of the Comprehensive
22 Environmental Response, Compensa-
23 tion and Liability Act (42 U.S.C.
24 9601(25));

1 ~~(II)~~ for natural resources dam-
2 ages; or

3 ~~(III)~~ to defend potential liability
4 ~~(including, but not limited to, attor-~~
5 ~~ney's fees, costs of suit, consultant~~
6 ~~and expert fees and costs, and ex-~~
7 ~~penses for testing and monitoring).~~

8 ~~(iii) NON-NPL SITES.—With respect~~
9 ~~to an eligible site described in subpara-~~
10 ~~graph (C)(ii), eligible costs means costs de-~~
11 ~~scribed in clause (i)—~~

12 ~~(I) of removal (as defined in sec-~~
13 ~~tion 101(23) of the Comprehensive~~
14 ~~Environmental Response, Compensa-~~
15 ~~tion and Liability Act (42 U.S.C.~~
16 ~~9601(23)); or~~

17 ~~(II) to defend potential liability~~
18 ~~(including, but not limited to, attor-~~
19 ~~ney's fees, costs of suit, consultant~~
20 ~~and expert fees and costs, and ex-~~
21 ~~penses for testing and monitoring).~~

22 ~~(iv) LIMIT ON ELIGIBLE COSTS.—~~

23 ~~(I) Except as provided in~~
24 ~~subclause (II), the eligible costs of an~~
25 ~~eligible person may not exceed—~~

1 (aa) \$15,000,000 in the case
2 of an eligible person that has
3 demonstrated insurance coverage
4 pursuant to subparagraph
5 (A)(ii)(I); or

6 (bb) an amount equal to
7 one-seventh of \$15,000,000 for
8 each year of insurance coverage,
9 in the case of an eligible person
10 that has demonstrated insurance
11 coverage pursuant to subpara-
12 graph (A)(ii)(II).

13 (II) The limitation on eligible
14 costs provided in subclause (I) shall
15 not apply to an eligible person that,
16 when filing a request for a resolution
17 offer with the Resolution Fund, pre-
18 sents evidence to the satisfaction of
19 the Resolution Fund that the limits
20 on valid contracts of insurance (in-
21 cluding per occurrence, aggregate, pri-
22 mary, excess or other limits) of such
23 eligible person prior to January 1,
24 1986, cumulatively exceed the amount
25 determined pursuant to subclause (I)

1 without reference to any time period.
2 For purposes of this clause, a valid
3 contract for insurance shall not in-
4 clude any contract for insurance with
5 respect to which an eligible person has
6 entered into a settlement with an in-
7 surer providing, or where a judgment
8 has provided, that the contract has
9 been satisfied and that such eligible
10 person has no right to make any fur-
11 ther claims under such contract.

12 ~~(C) ELIGIBLE SITE.~~—For purposes of this
13 subsection, the term “eligible site” means—

14 (i) any site or facility placed on the
15 National Priority List at any time, at
16 which a hazardous substance was disposed
17 of on or before December 31, 1985; or

18 (ii) any site or facility subject to a re-
19 moval (as defined in section 101(23) of the
20 Act (42 U.S.C. 9601(23)) conducted pur-
21 suant to such Act at any time, at which a
22 hazardous substance was disposed of on or
23 before December 31, 1985.

24 For purposes of this subparagraph, the term
25 “facility” shall have the same meaning as pro-

1 vided in section 101(9) of the Comprehensive
2 Environmental Response, Compensation and Li-
3 ability Act (42 U.S.C. 9601(9)).

4 (D) STATE.—For purposes of this sub-
5 section, the term “State” shall have the same
6 meaning as provided in section 101(27) of the
7 Comprehensive Environmental Response, Com-
8 pensation and Liability Act (42 U.S.C.
9 9601(27)).

10 (3) RESOLUTION OFFERS.—

11 (A) IN GENERAL.—The Resolution Fund
12 shall offer one comprehensive resolution to each
13 eligible person. The offer shall—

14 (i) be for a percentage of all of the eli-
15 gible costs of such eligible person incurred
16 in connection with all eligible sites, deter-
17 mined pursuant to paragraph (4); and

18 (ii) state the limitation on eligible
19 costs, if any, applicable to the eligible per-
20 son pursuant to paragraph (2)(B)(ii).

21 (B) REQUESTS FOR RESOLUTION OF-
22 FERS.—An eligible person shall file a request
23 for resolution from the Resolution Fund in such
24 form and manner as the Resolution Fund shall
25 prescribe. No such request shall be deemed re-

1 ceived by the Resolution Fund before the date
 2 final regulations concerning State percentage
 3 categories are published in the Federal Register
 4 pursuant to paragraph 4(B)(iii). The Resolu-
 5 tion Fund shall make an offer of resolution, de-
 6 termined pursuant to paragraph (4), to each el-
 7 igible person that has filed a request for an
 8 offer of resolution not later than 180 days after
 9 the receipt of a complete request as determined
 10 by the Resolution Fund.

11 (C) REVIEW OF RESOLUTION OFFERS.—

12 No resolution offer made by the Resolution
 13 Fund shall be subject to review by any court.

14 (4) DETERMINATION OF RESOLUTION OF-
 15 FERS.—

16 (A) IN GENERAL.—The Resolution Fund
 17 shall determine a resolution offer—

18 (i) in the case of an eligible person
 19 that has established only one State litiga-
 20 tion venue pursuant to subparagraph (C),
 21 by applying the State percentage deter-
 22 mined pursuant to subparagraph (B)(iii) to
 23 the established State litigation venue;

24 (ii) in the case of an eligible person
 25 that has established two or more State liti-

1 gation venues pursuant to subparagraph
2 (C), each site with respect to which a State
3 litigation venue has been established shall
4 be accorded equal value and the applicable
5 percentage shall be the weighted average of
6 all established State litigation venues; or

7 (iii) in the case of an eligible person
8 that has not established any State litigation
9 venue pursuant to subparagraph
10 (C)—

11 (I) if the eligible person has potential
12 liability in connection with only
13 one hazardous waste site, by applying
14 the State percentage determined pursuant
15 to subparagraph (B)(iii) to the
16 State in which the site is located; or

17 (II) if the eligible person has potential
18 liability in connection with
19 more than one hazardous waste site,
20 each site shall be accorded equal value
21 and the applicable percentage shall be
22 the weighted average of all States in
23 which the sites are located;

24 (B) STATE PERCENTAGE.—

1 (i) ~~IN GENERAL.~~—The Congress finds
2 that as of January 1, 1994, State law gen-
3 erally is more favorable to eligible persons
4 that pursue claims concerning eligible costs
5 against insurers in some States, that State
6 law generally is more favorable to insurers
7 with respect to such claims in some States,
8 and that in some States the law generally
9 favors neither insurers nor eligible persons
10 with respect to such claims or that there is
11 insufficient information to determine
12 whether such law generally favors insurers
13 or eligible persons with respect to such
14 claims. The Congress further finds that
15 considerations of equity and fairness re-
16 quire that resolution offers made by the
17 Resolution Fund must vary to reflect the
18 relative state of the law among the several
19 States.

20 (ii) ~~PROPOSED REGULATIONS.~~—The
21 Resolution Fund shall examine the law in
22 each State as of January 1, 1994. Not
23 later than 120 days after the date of en-
24 actment of this title, the Resolution Fund
25 shall publish in the Federal Register a no-

1 tice of proposed rulemaking soliciting pub-
2 lic comment for 60 days and classifying
3 States into the following percentage cat-
4 egories:

5 (I) 20 percent, in the case of the
6 ten States in which the Resolution
7 Fund determines that State law gen-
8 erally is most favorable to insurers
9 relative to the other States;

10 (II) 60 percent, in the case of the
11 ten States in which the Resolution
12 Fund determines that State law gen-
13 erally is most favorable to eligible per-
14 sons relative to the other States; and

15 (III) 40 percent, in the case of
16 all other States.

17 (iii) FINAL REGULATIONS.—

18 (I) Not later than 60 days after
19 the close of the public comment pe-
20 riod, the Resolution Fund shall pub-
21 lish in the Federal Register final reg-
22 ulations providing State classifica-
23 tions.

24 (II) The State classifications pro-
25 vided in the final rule shall govern all

1 resolution offers made by the Resolu-
2 tion Fund and shall not be subject to
3 amendment by the Resolution Fund.

4 (III) Notwithstanding any other
5 provision of law, the final regulations
6 promulgated by the Resolution Fund
7 pursuant to this clause shall not be
8 subject to review by any court.

9 (C) LITIGATION VENUE.—For purposes of
10 this subsection, litigation venue is considered
11 established with respect to an eligible person
12 if—

13 (i) on or before December 31, 1993,
14 the eligible person had pending in a court
15 of competent jurisdiction a complaint or
16 cross complaint against an insurer with re-
17 spect to eligible costs at an eligible site;
18 and

19 (ii) no motion to change venue with
20 respect to such complaint was pending on
21 or before January 31, 1994.

22 (5) ACCEPTANCE OR REJECTION OF RESOLU-
23 TION OFFER.—

24 (A) IN GENERAL.—

1 (i) An eligible person may, when sub-
2 mitting a request for a resolution to the
3 Resolution Fund, make a written irrev-
4 ocable election to accept any resolution to
5 be made by the Resolution Fund.

6 (ii) An eligible person that does not
7 make an election pursuant to clause (i)
8 shall, within 60 days of the receipt of a
9 resolution offer from the Resolution Fund,
10 notify the Resolution Fund in writing of its
11 irrevocable acceptance or rejection of such
12 offer. An eligible person who does not ac-
13 cept or reject a resolution offer within 60
14 days shall be deemed to have made an ir-
15 revocable election to reject the offer and
16 the provisions of subparagraph (C) shall
17 apply.

18 ~~(B) RESOLUTION OFFER ACCEPTED.—~~An
19 eligible person that accepts a resolution offered
20 by the Resolution Fund shall be subject to the
21 provisions of this paragraph.

22 (i) WAIVER OF INSURANCE CLAIMS.—
23 The Resolution Fund shall not make pay-
24 ments to an eligible person unless the eligi-

1 ble person agrees in writing, subject to re-
2 instatement described in clause (ii)—

3 (I) to waive any existing and fu-
4 ture claims against any insurer for eli-
5 gible costs; and

6 (II) to stay or dismiss each claim
7 pending against an insurer for eligible
8 costs.

9 (ii) REINSTATEMENT OF INSURANCE
10 CLAIMS.—

11 (I) If the Resolution Fund fails
12 to timely fulfill its obligations to an
13 eligible person under the terms of an
14 accepted resolution offer, such eligible
15 person shall be entitled to reinstate
16 any claim under a contract for insur-
17 ance with respect to eligible costs.

18 (II) STATUTE OF LIMITATION
19 TOLLED.—Notwithstanding any other
20 provision of Federal or State law, any
21 Federal or State statute of limitation
22 concerning the filing or prosecution of
23 an action by an eligible person against
24 an insurer, or by an insurer against
25 an eligible person, with respect to eli-

1 gible costs shall be tolled during the
2 pendency of the stay of pending litigation
3 established by section 804(a).

4 (iii) PAYMENT OF RESOLUTION OF-
5 FERS.—

6 (I) ~~PRE-RESOLUTION COSTS.—~~

7 The Resolution Fund shall make
8 equal annual payments over a period
9 of eight years for eligible costs in-
10 curred by an eligible person on or be-
11 fore the date such person accepts a
12 resolution offer pursuant to subpara-
13 graph (A) (i) or (ii), and interest shall
14 not accrue with respect to such eligi-
15 ble costs. The Resolution Fund may,
16 in its sole discretion, make such pay-
17 ments over a shorter period if the ag-
18 gregate eligible costs do not exceed
19 \$50,000. An eligible person shall sub-
20 mit to the Resolution Fund docu-
21 mentation of such costs as the Resolu-
22 tion Fund may require. The initial
23 payment to an eligible person under
24 this subclause shall be made not later
25 than 60 days after the receipt of doc-

1 umentation satisfactory to the Resolu-
2 tion Fund.

3 ~~(II) POST-RESOLUTION COSTS.—~~

4 The Resolution Fund shall make pay-
5 ments for eligible costs incurred by an
6 eligible person after the date such per-
7 son accepts a resolution offer pursu-
8 ant to subparagraph (A) (i) or (ii) to
9 the eligible person, or to a contractor
10 or other person designated by the eli-
11 gible person, subject to such docu-
12 mentation as the Resolution Fund
13 may require. Payments under this
14 subclause shall be made not later than
15 60 days after the receipt of docu-
16 mentation satisfactory to the Resolu-
17 tion Fund.

18 ~~(III) ADJUSTMENT FOR DEDUCT-~~

19 ~~IBLE OR SELF INSURANCE.—~~In the
20 case of an eligible person that has
21 submitted to the Resolution Fund, as
22 proof of status as an eligible person,
23 a contract for insurance described in
24 paragraph (2)(A)(ii) that is subject to
25 a self-insured retention or a deduct-

1 ible, payment to such eligible person
2 pursuant to a resolution shall be re-
3 duced by the amount of such self-in-
4 sured retention or deductible, except
5 that such reduction shall not exceed
6 the amount of one self-insured reten-
7 tion or one deductible that the eligible
8 person would have been required to
9 pay with respect to one claim for eligi-
10 ble costs under the terms of the con-
11 tracts for insurance submitted. In the
12 event that the eligible person submit-
13 ted more than one contract for insur-
14 ance, any such reduction shall be
15 made with respect to the lowest of the
16 amounts of self-insured retentions and
17 deductibles.

18 (IV) ~~ADJUSTMENT FOR CERTAIN~~
19 ~~DUTY-TO-DEFEND COSTS.~~—If an in-
20 surer has incurred and paid costs pur-
21 suant to a ~~duty-to-defend~~ clause con-
22 tained in a contract for insurance de-
23 scribed in paragraph (2)(B), and such
24 costs are the subject of a dispute be-
25 tween the eligible person and an in-

1 surer, the payment of a resolution to
2 an eligible person shall be reduced by
3 such amount, and the Resolution
4 Fund shall pay such amount to the
5 insurer. If such costs were paid by the
6 insurer on or before the date the eligi-
7 ble person accepted a resolution offer
8 made by the Resolution Fund, pay-
9 ment to an insurer under this
10 subclause shall be made in equal an-
11 nual installments over a period of
12 eight years, and interest shall not ac-
13 crue with respect to such costs. The
14 Resolution Fund may, in its sole dis-
15 cretion, make such payments over a
16 shorter period if the aggregate costs
17 do not exceed \$50,000.

18 ~~(C) RESOLUTION OFFER REJECTED; LITI-~~
19 ~~GATION OF INSURANCE CLAIMS.—~~

20 ~~(i) ADMISSIBILITY OF RESOLUTION~~
21 ~~OFFER.—No resolution offered by the Res-~~
22 ~~olution Fund shall be admissible in any~~
23 ~~legal action brought by an eligible person~~
24 ~~against an insurer or by an insurer against~~
25 ~~an eligible person.~~

1 (ii) ~~INSURER ACTION AGAINST ELIGI-~~
2 BLE PERSON.—Any eligible person that re-
3 jects a resolution offer, litigates a claim
4 with respect to eligible costs against an in-
5 surer, and obtains a final judgment that is
6 less favorable than the resolution offered
7 by the Resolution Fund, shall be liable to
8 such insurer for 20 percent of the reason-
9 able costs and legal fees incurred by the
10 insurer in connection with such litigation
11 after the resolution was offered to the eli-
12 gible person. The district courts of the
13 United States shall have original jurisdic-
14 tion of all such actions, without regard to
15 amount or value. The court shall reduce
16 any award to an insurer in any such action
17 by the amount, if any, of such costs and
18 legal fees recovered by the insurer pursu-
19 ant to State law or court rule. Nothing in
20 this clause shall be construed to limit or
21 affect in any way the application of State
22 law, or the rule of any court, to such costs
23 or legal fees.

24 (iii) ~~REIMBURSEMENT TO INSURER.—~~
25 In the case of an eligible person that re-

1 jects a resolution offer, litigates a claim
2 with respect to eligible costs against one or
3 more insurers, and obtains a final judg-
4 ment against any such insurer, the Resolu-
5 tion Fund—

6 (I) shall reimburse to such in-
7 surer or insurers the lesser of the
8 amount of the resolution offer made
9 to the eligible person or the final
10 judgment; and

11 (II) may, if the resolution offer
12 exceeded the final judgment, reim-
13 burse the insurer or insurers for unre-
14 covered reasonable costs and legal
15 fees, except that the total reimburse-
16 ment under this subclause may not
17 exceed the amount of the resolution
18 offer to the eligible person.

19 Reimbursements pursuant to this clause
20 shall be subject to such documentation as
21 the Resolution Fund may require and shall
22 be made by the Resolution Fund not later
23 than 60 days after receipt by the Resolu-
24 tion Fund of a complete request for reim-

1 bursement as determined by the Resolution
2 Fund.

3 ~~(6) PAYMENTS CONSIDERED PURSUANT TO IN-~~
4 ~~SURANCE CONTRACT.~~—Payments made by the Reso-
5 lution Fund pursuant to a resolution offer shall be
6 deemed payments made by an insurer under the
7 terms and conditions of a contract of insurance or
8 in settlement thereof. Nothing in this paragraph
9 shall be construed to affect in any way the issue of
10 whether the liability limits of a contract of insurance
11 has been satisfied.

12 ~~(7) RESOLUTION PROCESS NOT ADMISSION OF~~
13 ~~LIABILITY.~~—No provision of this title, and no action
14 by an eligible person undertaken in connection with
15 any provision of this title shall in any way constitute
16 an admission of liability in connection with the dis-
17 posal of a hazardous substance.

18 ~~(8) REGULATIONS.~~—

19 ~~(A) PROCEDURES AND DOCUMENTA-~~
20 ~~TION.~~—Not later than 120 days after the date
21 of enactment of this title, the Resolution Fund
22 shall publish in the Federal Register for public
23 comment of not more than 60 days interim
24 final regulations concerning procedures and
25 documentation for the submission of requests

1 for resolution offers and the payment of accept-
 2 ed resolution offers. Not later than 60 days
 3 after the close of the public comment period,
 4 the Resolution Fund shall publish in the Fed-
 5 eral Register final regulations concerning such
 6 procedures and documentation, which may be
 7 amended by the Resolution Fund from time to
 8 time.

9 (B) OTHER REGULATIONS.—The Resolu-
 10 tion Fund may prescribe such other regulations,
 11 rules and procedures as the Resolution Fund
 12 deems appropriate from time to time.

13 (C) JUDICIAL REVIEW.—No regulation,
 14 rule or procedure prescribed by the Resolution
 15 Fund pursuant to this paragraph shall be sub-
 16 ject to review by any court except to the extent
 17 such regulation, rule or procedure is not con-
 18 sistent with a provision of this title.

19 (h) JURISDICTION OF FEDERAL COURTS.—Notwith-
 20 standing section 1349 of title 28, United States Code:

21 (1) The Resolution Fund shall be deemed to be
 22 an agency of the United States for purposes of sec-
 23 tions 1345 and 1442 of title 28, United States Code.

24 (2) All civil actions to which the Resolution
 25 Fund is a party shall be deemed to arise under the

1 laws of the United States, and the district courts of
2 the United States shall have original jurisdiction of
3 all such actions, without regard to amount or value.

4 (3) Any civil or other action, case or con-
5 troversy in a court of a State, or in any court other
6 than a district court of the United States, to which
7 the Resolution Fund is a party may at any time be-
8 fore the trial thereof be removed by the Resolution
9 Fund, without the giving of any bond or security, to
10 the district court of the United States for the dis-
11 trict and division embracing the place where the
12 same is pending, or, if there is no such district
13 court, to the district court of the United States for
14 the district in which the principal office of the Reso-
15 lution Fund is located, by following any procedure
16 for removal of causes in effect at the time of such
17 removal.

18 (4) No attachment or execution shall be issued
19 against the Resolution Fund or any of its property
20 before final judgment in any State, Federal, or other
21 court.

22 (i) REPORTS.—

23 (1) ANNUAL REPORTS.—The Resolution Fund
24 shall report annually to the President and the Con-
25 gress not later than January 15 of each year on its

1 activities for the prior fiscal year. The report shall
2 include—

3 (A) a financial statement audited by an
4 independent auditor; and

5 (B) a determination of whether the fees
6 and assessments imposed by section of
7 the Internal Revenue Code of 1986 will be suf-
8 ficient to meet the anticipated obligations of the
9 Resolution Fund.

10 (2) SPECIAL REPORTS.—The Resolution Fund
11 shall promptly report to the President and the Con-
12 gress at any time the Resolution Fund determines
13 that the fees and assessments imposed by section
14 of the Internal Revenue Code of 1986 will be
15 insufficient to meet the anticipated obligations of the
16 Resolution Fund.

17 (j) FALSE OR FRAUDULENT STATEMENTS OR
18 CLAIMS.—

19 (1) CRIMINAL PENALTIES.—

20 (A) For purposes of section 287 of title 18,
21 United States Code (relating to false claims),
22 the Resolution Fund shall be considered an
23 agency of the United States and any officer or
24 employee of the Resolution Fund shall be con-

1 sidered a person in the civil service of the Unit-
2 ed States.

3 (B) For purposes of section 1001 of title
4 18, United States Code (relating to false state-
5 ments or entries), the Resolution Fund shall be
6 considered an agency of the United States.

7 (2) CIVIL PENALTIES.—Officers and employees
8 of the Resolution Fund shall be considered officers
9 and employees of the United States for purposes of
10 section 3729 of title 31, United States Code (relat-
11 ing to false claims).

12 **SEC. 803. FINANCIAL STATEMENTS, AUDITS, INVESTIGA-**
13 **TIONS AND INSPECTIONS.**

14 (a) IN GENERAL.—The financial statements of the
15 Resolution Fund shall be prepared in accordance with gen-
16 erally accepted accounting principles and shall be audited
17 annually by an independent certified public accountant in
18 accordance with the auditing standards issued by the
19 Comptroller General. Such auditing standards shall be
20 consistent with the private sector's generally accepted au-
21 diting standards.

22 (b) INVESTIGATIONS AND OTHER AUDITS.—The In-
23 specter General of the Environmental Protection Agency
24 is authorized to conduct such audits and investigations as
25 the Inspector General deems necessary or appropriate.

1 For purposes of the preceding sentence, the provisions of
2 the Inspector General Act of 1978 shall apply to the Reso-
3 lution Fund and to the Inspector General to the same ex-
4 tent as they apply to the Environmental Protection
5 Agency.

6 **SEC. 804. STAY OF PENDING LITIGATION.**

7 (a) IN GENERAL.—

8 (1) Except as provided in this section, enact-
9 ment of this title operates as a stay, applicable to all
10 persons other than the United States, of the com-
11 mencement or continuation, including the issuance
12 or employment of process or service of any pleading,
13 motion, or notice, of any judicial, administrative, or
14 other action with respect to claims for indemnity or
15 other claims arising from a contract for insurance
16 described in section 802(g)(2)(A)(ii) concerning in-
17 surance coverage for eligible costs as defined in sec-
18 tion 802(g)(2)(B)(i).

19 (2) Nothing in paragraph (1) shall be construed
20 to apply to the extent the issuance or employment
21 of process or service of any pleading, motion, or no-
22 tice, of any judicial, administrative, or other action
23 with respect to claims for indemnity or other claims
24 does not concern eligible costs (as defined in section
25 802(g)(2)(B)(i)) or a contract for insurance de-

1 scribed in section 802(g)(2)(A)(ii). An eligible per-
 2 son (as defined in section 802(g)(2)(A)) may move
 3 to sever claims not involving eligible costs from
 4 claims involving eligible costs and may proceed with
 5 the prosecution of claims not involving eligible costs.

6 ~~(b) TERMINATION OF STAY.—~~

7 ~~(1) PENDING OFFER OF RESOLUTION.—~~The
 8 stay established by subsection (a) shall terminate
 9 with respect to an eligible person upon the earlier
 10 of—

11 ~~(A) the rejection of a resolution offer by~~
 12 ~~such eligible person pursuant to section~~
 13 ~~802(g)(5)(A); or~~

14 ~~(B) the failure of the Resolution Fund to~~
 15 ~~timely fulfill the terms of a resolution offer ac-~~
 16 ~~cepted by such eligible person.~~

17 ~~(2) EXPIRATION OF RESOLUTION OFFERS.—~~No
 18 stay established by subsection (a) shall be effective
 19 after May 31, 2000.

20 ~~(c) OTHER STAYS.—~~Nothing in this section shall be
 21 construed to limit or affect in any way the discretion of
 22 any judicial, administrative, or other entity to maintain
 23 or impose a stay that is not required by subsection (a)
 24 but that will otherwise serve the ends of justice by staying
 25 a judicial, administrative or other action pending the ac-

1 ceptance or rejection of a resolution offer pursuant to sec-
 2 tion 802(g)(5)(A).

3 ~~(d) AUTHORITY OF UNITED STATES UNAF-~~
 4 ~~FFECTED.~~—Nothing in this section shall be construed to
 5 limit or affect in any way the discretion or authority of
 6 the United States or any party to commence or continue
 7 an allocation process, cost recovery, or other action pursu-
 8 ant to the authority of sections 101–122a of the Com-
 9 prehensive Environmental Response, Compensation and
 10 Liability Act (42 U.S.C. 9601–9622a).

11 **SEC. 805. SUNSET PROVISIONS.**

12 ~~(a) AUTHORITY TO ACCEPT REQUESTS FOR RESO-~~
 13 ~~LUTION.~~—The authority of the Resolution Fund to accept
 14 requests for resolution shall terminate after September 30,
 15 1999.

16 ~~(b) AUTHORITY TO OFFER RESOLUTIONS.~~—The au-
 17 thority of the Resolution Fund to offer resolutions to eligi-
 18 ble persons shall terminate after March 31, 2000.

19 ~~(c) CONTINUING OBLIGATIONS.~~—Nothing in this sec-
 20 tion shall be construed to limit or affect in any way the
 21 authority of the Resolution Fund—

22 ~~(1) to make payments pursuant to resolution~~
 23 ~~offers made on or before March 31, 2000; or~~

24 ~~(2) to reimburse insurers with respect to litiga-~~
 25 ~~tion commenced or continued in connection with a~~

1 resolution offer made on or before March 31, 2000,
 2 that was rejected by an eligible person or not acted
 3 upon by an eligible person as provided in section
 4 802(g)(5)(A).

5 **SEC. 806. SOVEREIGN IMMUNITY OF THE UNITED STATES.**

6 No obligation or liability of the Resolution Fund shall
 7 constitute an obligation or liability of the United States,
 8 or of any department, agency, instrumentality, officer, or
 9 employee thereof. No person shall have a cause of action
 10 of any kind against the United States, or any department,
 11 agency, instrumentality, officer, or employee thereof with
 12 respect to any obligation, liability, or activity of the Reso-
 13 lution Fund.

14 **SEC. 807. EFFECTIVE DATE.**

15 The provisions of this title shall become effective on
 16 the date of enactment of this title.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Superfund Reform Act*
 19 *of 1994”.*

20 **SEC. 2. TABLE OF CONTENTS.**

21 *The table of contents for this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

*Sec. 3. References to Comprehensive Environmental Response, Compensation, and
 Liability Act of 1980.*

TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH

Sec. 101. Public participation.

Sec. 102. Community Working Groups.

Sec. 103. Hazard ranking system.

- Sec. 104. Health authorities.*
- Sec. 105. Determining health effects.*
- Sec. 106. Community health programs.*
- Sec. 107. Public health recommendations in remedial actions.*
- Sec. 108. Rights to participate.*
- Sec. 109. Transition.*

TITLE II—STATE ROLES

- Sec. 201. Delegated State response actions and authorized State response programs.*
- Sec. 202. State cost share.*
- Sec. 203. Siting.*
- Sec. 204. State Registry.*
- Sec. 205. Conforming and miscellaneous amendments.*
- Sec. 206. State role at Federal facilities.*

TITLE III—VOLUNTARY ENVIRONMENTAL CLEANUP

- Sec. 301. Short title.*
- Sec. 302. Findings and purpose.*
- Sec. 303. Definitions.*
- Sec. 304. Voluntary Cleanup Grant Program.*
- Sec. 305. Economic Redevelopment Credit Assistance Program.*
- Sec. 306. Regulations.*
- Sec. 307. Economic Redevelopment Revolving Fund.*
- Sec. 308. Authorizations of appropriations.*
- Sec. 309. Reports.*
- Sec. 310. Funding.*
- Sec. 311. Statutory construction.*

TITLE IV—LIABILITY AND ALLOCATION

- Sec. 401. Information gathering and access.*
- Sec. 402. Compliance with administrative orders.*
- Sec. 403. Limitations on liability for response costs.*
- Sec. 404. Liability.*
- Sec. 405. Civil proceedings.*
- Sec. 406. Limitations on contribution actions.*
- Sec. 407. Scope of rulemaking authority.*
- Sec. 408. Enhancement of settlement authorities.*
- Sec. 409. Allocation procedures.*
- Sec. 410. Clarification of liability for recycling transactions.*
- Sec. 411. Lender and fiduciary liability.*
- Sec. 412. Religious, charitable, scientific, or educational organizations.*
- Sec. 413. Working group.*
- Sec. 414. Indirect costs.*
- Sec. 415. Release of evidence.*
- Sec. 416. Contiguous properties.*

TITLE V—REMEDY SELECTION AND CLEANUP STANDARDS

- Sec. 501. Cleanup standards.*
- Sec. 502. Remedy selection.*
- Sec. 503. Miscellaneous amendments to section 121.*
- Sec. 504. Response authorities.*
- Sec. 505. Removal actions.*

Sec. 506. Transition.

TITLE VI—MISCELLANEOUS

Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.

Sec. 602. Transfers of uncontaminated property.

Sec. 603. Agreements to transfer by deed.

Sec. 604. Alternative or innovative treatment technologies.

Sec. 605. Definitions.

Sec. 606. Conforming amendment.

Sec. 607. Response claims procedures.

Sec. 608. Small business ombudsman.

Sec. 609. Consideration of local government cleanup priorities in allocation of oversight resources.

Sec. 610. Severability.

Sec. 611. Results-oriented cleanups.

Sec. 612. Innovative technologies for remedial action at Federal facilities.

Sec. 613. Notification.

Sec. 614. Certification of environmental training and certification organizations.

Sec. 615. Sense of the Committee concerning offsets from the corporate environmental income tax to pay for welfare reform.

TITLE VII—FUNDING

Sec. 701. Authorization of appropriations.

Sec. 702. Orphan share funding.

Sec. 703. Department of Health and Human Services.

Sec. 704. Limitations on research, development, and demonstration programs.

Sec. 705. Authorization of appropriations from general revenues.

Sec. 706. Additional limitations.

Sec. 707. Uses of the Fund.

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TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND

Sec. 801. Short title.

Sec. 802. Definitions.

Sec. 803. Environmental Insurance Resolution Fund.

Sec. 804. Resolution offers.

Sec. 805. Documentation of claims and insurance coverage.

Sec. 806. Amount of resolution offers.

Sec. 807. Acceptance of resolution offer.

Sec. 808. Resolution payments.

Sec. 809. Rejection of resolution offer and reimbursement to insurer.

Sec. 810. Financial controls; audits, investigations and inspections.

Sec. 811. Stay of pending litigation.

Sec. 812. Regulations.

Sec. 813. Court jurisdiction and penalties.

Sec. 814. Miscellaneous provisions.

Sec. 815. Reports.

Sec. 816. Effective date.

Sec. 817. Termination of authority to offer and accept resolution.

Sec. 818. Termination of Fund.

Sec. 901. Amendments to the Internal Revenue Code of 1986.

Sec. 902. Environmental fees and assessments on insurance companies.

Sec. 903. Funding provisions for Environmental Insurance Resolution Fund.

Sec. 904. Resolution Fund not subject to tax.

1 **SEC. 3. REFERENCES TO COMPREHENSIVE ENVIRON-**
2 **MENTAL RESPONSE, COMPENSATION, AND LI-**
3 **ABILITY ACT OF 1980.**

4 *Except as otherwise expressly provided, whenever in*
5 *this Act an amendment or repeal is expressed in terms of*
6 *an amendment to, or repeal of, a section or other provision,*
7 *the reference shall be considered to be made to a section or*
8 *other provision of the Comprehensive Environmental Re-*
9 *sponse, Compensation, and Liability Act of 1980 (com-*
10 *monly known as the “Superfund Act”) (42 U.S.C. 9601 et*
11 *seq.).*

12 **TITLE I—COMMUNITY PARTICI-**
13 **PATION AND HUMAN HEALTH**

14 **SEC. 101. PUBLIC PARTICIPATION.**

15 *Section 117 (42 U.S.C. 9617) is amended by striking*
16 *subsection (e) and inserting the following new subsections:*

17 *“(e) GRANTS FOR TECHNICAL ASSISTANCE.—*

18 *“(1) AUTHORITY.—In accordance with rules pro-*
19 *mulgated by the Administrator, the Administrator*
20 *may make grants available to any group of individ-*
21 *uals that may be affected by the release or threatened*
22 *release of hazardous substances or pollutants or con-*

1 *taminants at any facility on the State Registry or the*
2 *National Priorities List (referred to in this subsection*
3 *as 'affected citizens'). Such grants shall be known as*
4 *Technical Assistance Grants. To ensure that the ap-*
5 *plication process for such grants is accessible to all af-*
6 *ected citizens, the Administrator shall periodically*
7 *review such process and, based on such review, shall*
8 *implement appropriate changes to the application*
9 *process to improve access.*

10 *“(2) SPECIAL RULES.—No matching contribu-*
11 *tion shall be required for a Technical Assistance*
12 *Grant. The Administrator shall make all or a portion*
13 *of the grant amount available to the grant recipient*
14 *in advance of the total expenditures to be covered by*
15 *the grant. Such portion shall be not less than \$5,000*
16 *or 10 percent of the grant amount, whichever is great-*
17 *er.*

18 *“(3) LIMIT PER FACILITY.—Not more than 1*
19 *grant may be made under this subsection with respect*
20 *to a single facility, but the grant may be renewed to*
21 *facilitate public participation at all stages of response*
22 *action. Limits shall be established with respect to the*
23 *number of years for which the grants may be made*
24 *available based on the duration, type, and extent of*
25 *response activity at a facility.*

1 “(4) *FUNDING AVAILABILITY.*—Subject to the
2 limitations provided in paragraph (5), 1 or more of
3 the grants shall be made available to affected citizens
4 who live in communities containing facilities on the
5 State Registry not yet listed on the National Prior-
6 ities List as of the date on which the grant is award-
7 ed.

8 “(5) *FUNDING LIMIT.*—Not more than 4 percent
9 of the funds made available for carrying out this Act
10 for any fiscal year may be used for grants under this
11 subsection in that fiscal year and not more than $\frac{1}{8}$
12 of the funds used under this subsection for a fiscal
13 year may be used for grants with respect to facilities
14 not listed on the National Priorities List. If such $\frac{1}{8}$
15 portion is not needed for such facilities, such portion
16 may be used for grants with respect to facilities listed
17 on the National Priorities List.

18 “(6) *FUNDING AMOUNT.*—The initial amount of
19 any grant made under this subsection may not exceed
20 \$50,000 for a single grant recipient. The Adminis-
21 trator shall increase the initial amount of the grant,
22 as appropriate, to reflect the complexity of the re-
23 sponse action, the nature and extent of contamination
24 at the facility, the level of facility activity, projected
25 total needs as requested by the grant recipient, the

1 *size and diversity of the affected population, and the*
 2 *ability of the grant recipient to identify and raise*
 3 *funds from other sources.*

4 “(7) *AUTHORIZED GRANT ACTIVITIES.*—

5 “(A) *INTERPRETATION OF INFORMATION.*—

6 *A grant awarded under this subsection may be*
 7 *used to obtain technical assistance in interpret-*
 8 *ing information with regard to—*

9 “(i) *the nature of the hazard;*

10 “(ii) *the remedial investigation and*
 11 *feasibility study;*

12 “(iii) *the record of decision;*

13 “(iv) *the selection, design, and con-*
 14 *struction of the remedial action;*

15 “(v) *operation and maintenance; or*

16 “(vi) *the removal activities;*
 17 *at such facility.*

18 “(B) *ADDITIONAL ACTIVITIES.*—*A grant*
 19 *awarded under this subsection also may be*
 20 *used—*

21 “(i) *to obtain technical assistance in*
 22 *gathering and interpreting information*
 23 *used to rank facilities according to the haz-*
 24 *ard ranking system;*

1 “(ii) for gathering information to as-
2 sess a remedy selection decision;

3 “(iii) to hire health and safety experts
4 to advise affected citizens on health assess-
5 ment and contamination data gathering ef-
6 forts and response activities;

7 “(iv) to hire a community liaison to
8 potentially responsible parties and govern-
9 ment agencies;

10 “(v) to hire experts to file comments
11 with governmental agencies and generate
12 other documents as necessary to ensure full
13 participation by the grant recipient;

14 “(vi) to hire experts to provide input
15 into the design of any health studies that a
16 government agency performs; and

17 “(vii) for training funds for interested
18 affected citizens to enable them to more ef-
19 fectively participate in the remedy selection
20 process.

21 “(C) *LIMITATION.*—Grants awarded under
22 this subsection may not be used for the purpose
23 of collecting field sampling data.

24 “(8) *GRANT GUIDELINES.*—Not later than 90
25 days after the date of enactment of the Superfund Re-

1 *form Act of 1994, the Administrator shall develop and*
2 *publish guidelines concerning management of grants*
3 *awarded under this subsection. Technical or other ex-*
4 *perts hired by recipients of such grants shall be hired*
5 *by such recipients under the guidelines.*

6 “(f) *IMPROVING CITIZEN AND COMMUNITY PARTICIPA-*
7 *TION IN THE SUPERFUND DECISIONMAKING PROCESS.—*

8 “(1) *IN GENERAL.—*

9 “(A) *MEETINGS AND NOTICE.—In order to*
10 *provide an opportunity for meaningful public*
11 *participation in every significant phase of re-*
12 *sponse activities under this Act, the President*
13 *shall provide the opportunity for public meetings*
14 *and publish a notice of such meetings before or*
15 *during performance of each of the following:*

16 “(i) *A health assessment and a pre-*
17 *liminary assessment and site inspection, as*
18 *appropriate. If a citizen requests such a*
19 *public meeting and the President deter-*
20 *mines that such a meeting is not appro-*
21 *priate at the preliminary assessment and*
22 *site inspection stage, the President shall*
23 *provide adequate public notice of that deter-*
24 *mination.*

1 “(ii) A remedial investigation and fea-
2 sibility study.

3 “(iii) An announcement of the pre-
4 ferred remedial alternative.

5 “(iv) The completion of a work plan
6 for a remedial investigation and feasibility
7 study, for a remedial design, or for a reme-
8 dial action.

9 “(B) INFORMATION.—The public meetings
10 shall be designed to obtain information from the
11 community, and disseminate information to the
12 community, with respect to the facility involved
13 concerning the President’s facility activities and
14 pending decisions.

15 “(2) PARTICIPANTS AND SUBJECT.—The Presi-
16 dent also shall provide reasonable notice of an oppor-
17 tunity for public participation in meetings in
18 which—

19 “(A) the participants include Federal offi-
20 cials (or State officials, where the State is con-
21 ducting response activities under an authorized
22 program or through facility referral) with au-
23 thority to make significant decisions affecting a
24 response action, and any other person or per-
25 sons, unless the other person or persons are all

1 *coregulators that are not potentially responsible*
2 *parties, or are government contractors; and*

3 *“(B) the subject of the meeting involves dis-*
4 *cussions directly affecting either—*

5 *“(i) a legally enforceable work plan*
6 *document, or any amendment to the docu-*
7 *ment, for a removal, remedial investigation,*
8 *feasibility study, remedial design, or reme-*
9 *dial action, for a facility on the National*
10 *Priorities List; or*

11 *“(ii) the final package of information*
12 *on which the Administrator will base a haz-*
13 *ard ranking system score for a facility.*

14 *“(3) LIMITATION.—Nothing in this subsection*
15 *shall be construed—*

16 *“(A) to provide for public participation in,*
17 *or otherwise affect, any negotiation, meeting, or*
18 *other discussion, solely concerning potential li-*
19 *ability or settlement of potential liability, wheth-*
20 *er prior to or following the commencement of*
21 *litigation or administrative enforcement action;*

22 *“(B) to provide for public participation in,*
23 *or otherwise affect, any negotiation, meeting, or*
24 *other discussion, attended exclusively by rep-*
25 *resentatives of the United States or any of the*

1 *departments, agencies, or instrumentalities of the*
2 *United States, with attorneys representing the*
3 *United States, or any of the departments, agen-*
4 *cies, or instrumentalities of the United States; or*

5 *“(C) to waive, compromise, or affect any*
6 *privilege that may be applicable to a commu-*
7 *nication related to an activity described in sub-*
8 *paragraph (A) or (B).*

9 *“(4) EVALUATION.—To the extent practicable, be-*
10 *fore and during the health assessment and site inspec-*
11 *tion, the President shall solicit and evaluate concerns,*
12 *interests, and information from the community. The*
13 *evaluation shall include, as appropriate—*

14 *“(A) face-to-face community surveys to*
15 *identify the location of private drinking water*
16 *wells, historic and current or potential use of*
17 *water, and other environmental resources in the*
18 *community;*

19 *“(B) a public meeting;*

20 *“(C) written responses to significant con-*
21 *cerns; and*

22 *“(D) other appropriate participatory ac-*
23 *tivities.*

24 *“(5) VIEWS AND PREFERENCES.—During the re-*
25 *medial investigation and feasibility study, the Presi-*

1 *dent shall solicit the views and preferences of the com-*
2 *munity on the remediation and disposition of hazard-*
3 *ous substances or pollutants or contaminants at the*
4 *facility. The views and preferences of the community*
5 *shall be described in the remedial investigation and*
6 *feasibility study and considered in the screening of re-*
7 *medial alternatives for the facility.*

8 “(6) *ALTERNATIVES.*—*Members of the commu-*
9 *nity may propose remedial alternatives to the Presi-*
10 *dent, and the President shall consider such alter-*
11 *natives in the same manner as the President consid-*
12 *ers alternatives proposed by potentially responsible*
13 *parties.*

14 “(7) *INFORMATION.*—*The President, with the as-*
15 *stance of the Citizen Information and Access Office*
16 *(as provided for in subsection (h)) and a Community*
17 *Working Group (referred to in this Act as a ‘Commu-*
18 *nity Working Group’)* *(as provided for in subsection*
19 *(g)) where a Community Working Group exists, shall*
20 *provide information to the community and seek com-*
21 *ment from the community throughout all significant*
22 *phases of the response action at the facility. The*
23 *President shall ensure that information gathered from*
24 *the community during community outreach efforts*
25 *reaches appropriate technical staff in a timely and ef-*

1 *fective manner. The President also shall ensure rea-*
 2 *sonable written or other appropriate responses to such*
 3 *information.*

4 “(8) *NONPRIVILEGED INFORMATION.*—*The Presi-*
 5 *dent shall make all nonprivileged information relat-*
 6 *ing to the facility available to the public throughout*
 7 *all phases of response action at the facility. Such in-*
 8 *formation shall be made available to the public for in-*
 9 *spection and copying without the need to file a formal*
 10 *request, subject to reasonable service charges as appro-*
 11 *priate.*

12 “(9) *PRESENTATION.*—

13 “(A) *DOCUMENTS.*—*The President, in car-*
 14 *rying out responsibilities under this Act, shall*
 15 *ensure that the presentation of information on*
 16 *risk is complete and informative. To the extent*
 17 *feasible, documents made available to the general*
 18 *public that purport to describe the degree of risk*
 19 *to human health shall, at a minimum, state—*

20 “(i) *the upperbound and lowerbound*
 21 *estimates of the risk;*

22 “(ii) *the population or populations ad-*
 23 *ressed by any estimates of the risk;*

24 “(iii) *the expected risk or central esti-*
 25 *mate of the risk for the specific population;*

1 “(iv) the reasonable range or other de-
2 scription of uncertainties in the assessment
3 process; and

4 “(v) the assumptions that form the
5 basis for any estimates of such risk posed by
6 the facility and a brief explanation of the
7 assumptions.

8 “(B) COMPARISONS.—To the extent prac-
9 tical and appropriate, the President, in carrying
10 out such responsibilities, shall provide compari-
11 sons of the level of risk from hazardous sub-
12 stances found at the facility to comparable levels
13 of risk from those hazardous substances ordi-
14 narily encountered by the general public through
15 other sources of exposure.

16 “(10) REQUIREMENTS.—Notwithstanding any
17 other provision of this subsection, in the case of a re-
18 moval action taken in accordance with section 104
19 that is expected to extend beyond 180 days, and in
20 any case in which implementation of a removal ac-
21 tion is expected to obviate or obviates the need to con-
22 duct a long-term remedial action, the removal action
23 shall achieve the protective concentration levels and
24 other standards specified in subsections (b) and (d) of
25 section 121, and the Administrator shall, to the maxi-

1 *to the maximum extent practicable, allow for public participa-*
 2 *tion in accordance with the requirements of this sec-*
 3 *tion. In the case of all other removal actions, the Ad-*
 4 *ministrator may provide the community with notice*
 5 *of the anticipated removal action and a public com-*
 6 *ment period, as appropriate.”.*

7 **SEC. 102. COMMUNITY WORKING GROUPS.**

8 *Section 117 (42 U.S.C. 9617) is amended by adding*
 9 *after subsection (f) (as added by section 101) the following*
 10 *new subsections:*

11 “(g) *COMMUNITY WORKING GROUPS.*—

12 “(1) *CREATION AND RESPONSIBILITIES.*—*The*
 13 *President shall facilitate the establishment of a rep-*
 14 *resentative public forum in the form of a Community*
 15 *Working Group, to achieve direct, regular, and mean-*
 16 *ingful consultation with all interested parties*
 17 *throughout all stages of a response action whenever—*

18 “(A) *the President determines such a group*
 19 *will be helpful to achieve the purposes of this*
 20 *Act; or*

21 “(B) *at least 50 citizens, or at least 20 per-*
 22 *cent, of the population of the community petition*
 23 *for a Community Working Group to be estab-*
 24 *lished.*

1 “(2) *DUTIES.—Each Community Working*
2 *Group shall provide information and views to the*
3 *President, and, as appropriate, any or all of the fol-*
4 *lowing:*

5 “(A) *The Secretary of Health and Human*
6 *Services.*

7 “(B) *State regulatory agencies.*

8 “(C) *Federal and State natural resource*
9 *trustees.*

10 “(D) *Potentially responsible parties con-*
11 *ducting response actions.*

12 “(E) *Local government and local public*
13 *health agencies.*

14 *The information and views reported shall address the*
15 *various subjects related to facility remediation, in-*
16 *cluding facility health studies, potential remedial al-*
17 *ternatives, and selection and implementation of reme-*
18 *dial and removal actions. The Community Working*
19 *Group shall attempt to achieve consensus among its*
20 *members before reporting the views to agencies or po-*
21 *tentially responsible parties. In cases in which con-*
22 *sensus cannot be reached, the Community Working*
23 *Group shall describe the divergent views of the mem-*
24 *bers of the group.*

1 “(3) *LAND USE RECOMMENDATIONS.*—To obtain
2 greater community support for remedial decisions af-
3 fecting future land use, the President shall consult
4 with the Community Working Group and appropriate
5 local governing entities and local planning entities on
6 a regular basis throughout the remedy selection proc-
7 ess regarding the reasonably anticipated future use of
8 land at the facility and any institutional controls re-
9 quired to ensure that land use determinations remain
10 in effect. The Community Working Group may offer
11 recommendations on the reasonably anticipated fu-
12 ture use of land at the facility to the President at any
13 time prior to the selection of a remedy at the facility.
14 In making the land use recommendation, the Commu-
15 nity Working Group shall consider, at a minimum,
16 future facility waste management needs, applicable
17 local zoning and land use plans, and the factors de-
18 scribed in section 121(b)(2). The President shall not
19 be bound by any recommendation of the Community
20 Working Group. The President shall give substantial
21 weight to the Community Working Group’s land use
22 recommendation when the Community Working
23 Group achieves consensus on the reasonably antici-
24 pated future use of land at the facility. In cases in
25 which there is substantive disagreement within the

1 *Community Working Group over a recommendation*
2 *regarding the reasonably anticipated future use of*
3 *land at the facility, the President shall make reason-*
4 *able efforts to reconcile the differences. In the event of*
5 *continued substantive disagreement, substantial*
6 *weight shall be given to the views of local residents.*
7 *Should the President make a determination that is*
8 *inconsistent with a consensus Community Working*
9 *Group recommendation on the reasonably expected fu-*
10 *ture use of land at the facility, the President shall*
11 *issue a written explanation for the inconsistency.*

12 “(4) *COMMUNITY WORKING GROUP INPUT.—With*
13 *the exception of land use recommendations, input re-*
14 *ceived from the Community Working Groups shall be*
15 *considered by the President to be of equal weight with*
16 *the advice received from the Technical Assistance*
17 *Grant recipients and other community members.*

18 “(5) *COMMUNITY WORKING GROUP MEMBERS.—*
19 *Members shall serve on the Community Working*
20 *Group without pay. Membership on the Community*
21 *Working Group shall not exceed 20 persons. The*
22 *President shall solicit and accept nominations for the*
23 *Community Working Group membership. Ultimate*
24 *selection of Community Working Group members*
25 *shall be made by the President after consultation with*

1 *the Citizen Information and Access Office as provided*
2 *for in subsection (h). The President shall also provide*
3 *notice and opportunity to apply for membership in*
4 *the Community Working Group to persons who are or*
5 *historically have been disproportionately affected by*
6 *facility contamination in the community. Each Com-*
7 *munity Working Group shall, to the extent prac-*
8 *ticable, reflect the composition of the community and*
9 *the diversity of interest. Local residents shall, to the*
10 *extent practicable, comprise no less than 50 percent of*
11 *the total membership of the Community Working*
12 *Group. In general, the President shall allow members*
13 *of each of the following groups representation on a*
14 *Community Working Group:*

15 “(A) *Persons residing or owning residential*
16 *property near a facility or persons who may be*
17 *directly affected by the releases from the facility.*
18 *At least 1 person in this group shall represent*
19 *the Technical Assistance Grant recipient if such*
20 *a grant has been awarded under subsection (e)*
21 *with respect to the facility.*

22 “(B) *Persons who, although not residing or*
23 *owning residential property near the facility,*
24 *may be affected by releases from the facility.*

1 “(C) Members of the local medical commu-
2 nity practicing in the community.

3 “(D) Representatives of local Indian tribes
4 or Indian communities.

5 “(E) Local representatives of citizen, envi-
6 ronmental, or public interest groups with mem-
7 bers residing in the community.

8 “(F) Local government, which may include
9 pertinent city or county governments, or both,
10 and any other governmental unit that regulates
11 land use in the vicinity of the facility.

12 “(G) Workers at the facility who will be in-
13 volved in response operations.

14 “(H) Workers employed at the facility dur-
15 ing facility operation.

16 “(I) Facility owners and local representa-
17 tives of the potentially responsible parties who
18 represent, wherever practicable, a balance of po-
19 tentially responsible party interests.

20 “(J) Members of the local business commu-
21 nity.

22 “(6) *SUPPORT FOR COMMUNITY WORKING*
23 *GROUPS.*—The President shall provide administrative
24 services and meeting facilities for Community Work-
25 ing Groups. The President may make grants to Com-

1 *munity Working Groups to assist the groups in car-*
 2 *rying out activities that the Community Working*
 3 *Groups are authorized to carry out under this Act.*
 4 *The Environmental Protection Agency, the Secretary*
 5 *of Health and Human Services, and the State in*
 6 *which the facility is located, as appropriate, may*
 7 *participate, at the request of the Community Working*
 8 *Group, in Community Working Group meetings to*
 9 *provide information and technical expertise, but shall*
 10 *not be members of the Community Working Group.*

11 “(7) *OTHER PUBLIC COMMENT.*—*The existence of*
 12 *a Community Working Group shall not diminish any*
 13 *other obligation of the President to consider the views*
 14 *of any person in selecting response actions under this*
 15 *Act.*

16 “(h) *CITIZEN INFORMATION AND ACCESS GRANT PRO-*
 17 *GRAM.*—

18 “(1) *ESTABLISHMENT OF CITIZEN INFORMATION*
 19 *AND ACCESS OMBUDSMAN OFFICE.*—

20 “(A) *OFFICE.*—*The Administrator shall es-*
 21 *tablish a Citizen Information and Access Om-*
 22 *budsman Office in—*

23 “(i) *the Office of Environmental Jus-*
 24 *tice in the national headquarters office of*
 25 *the Environmental Protection Agency; and*

1 “(ii) each regional office of the agency.

2 “(B) OMBUDSMAN.—Each Citizen Informa-
3 tion and Access Ombudsman Office described in
4 subparagraph (A) shall be headed by a Citizen
5 Information and Access Ombudsman (referred to
6 in this subsection as an ‘Ombudsman’).

7 “(C) DUTIES.—Each Ombudsman in a re-
8 gional office shall—

9 “(i) assist the Administrator in ad-
10 ministering the grant program established
11 under this subsection with respect to each
12 State in the region;

13 “(ii) carry out the functions described
14 in paragraph (3) for each State in the re-
15 gion unless the Administrator awards a
16 grant for the State under paragraph (2);
17 and

18 “(iii) provide the information and de-
19 scriptions specified in paragraph (3) to the
20 Citizen Information and Access Offices in
21 the region.

22 “(2) GRANTS.—

23 “(A) IN GENERAL.—Subject to such
24 amounts as are provided in appropriations Acts,
25 and in accordance with regulations established

1 *by the Administrator under subparagraph (D),*
2 *the Administrator shall award grants to eligible*
3 *groups within States to enable the groups to es-*
4 *tablish Citizen Information and Access Offices*
5 *and carry out the functions described in para-*
6 *graph (3) in the States in accordance with the*
7 *requirements of this subsection.*

8 “(B) *ELIGIBLE GROUPS.*—*The Adminis-*
9 *trator shall award grants to groups that meet the*
10 *requirements specified in the regulations estab-*
11 *lished under subparagraph (D).*

12 “(C) *APPLICATION.*—*To be eligible to re-*
13 *ceive a grant under this paragraph, a group*
14 *shall submit to the Administrator an application*
15 *at such time, in such manner, and containing*
16 *such information as the Administrator may re-*
17 *quire, including, at a minimum, a budget and*
18 *work plan for the activities to be carried out*
19 *under the grant.*

20 “(D) *REGULATIONS FOR AWARDING*
21 *GRANTS.*—

22 “(i) *IN GENERAL.*—*The Administrator*
23 *shall issue regulations establishing proce-*
24 *dures and criteria for awarding grants*
25 *under this paragraph.*

1 “(ii) *PROCEDURES.*—Such regulations
2 shall, at a minimum, require that the Ad-
3 ministrator, prior to awarding a grant
4 under this paragraph—

5 “(I) shall consult with the Gov-
6 erning Board; and

7 “(II) shall comply with public no-
8 tification and participation proce-
9 dures.

10 “(iii) *ELIGIBLE GROUPS.*—

11 “(I) *IN GENERAL.*—The regula-
12 tions shall include criteria relating to
13 the qualifications of groups eligible to
14 receive grants under this paragraph.

15 “(II) *NONGOVERNMENTAL EDU-*
16 *CATIONAL OR INFORMATIONAL ORGANI-*
17 *ZATION.*—The regulations shall require
18 that, to be eligible to receive a grant
19 under this paragraph, a group shall be
20 a nongovernmental educational or in-
21 formational organization.

22 “(III) *COMMUNITIES AFFECTED*
23 *BY NATIONAL PRIORITIES LIST OR*
24 *STATE REGISTRY FACILITIES.*—The
25 regulations shall require that a group

1 *that receives a grant under this para-*
 2 *graph for a State shall include—*

3 *“(aa) participants that rep-*
 4 *resent communities that, collec-*
 5 *tively, are affected by a variety of*
 6 *National Priorities List facilities*
 7 *in the State; and*

8 *“(bb) participants that rep-*
 9 *resent communities that, collec-*
 10 *tively, are affected by a variety of*
 11 *State Registry facilities in the*
 12 *State.*

13 *Each such class of participants shall*
 14 *have a demonstrated commitment to*
 15 *the needs of the citizens in the commu-*
 16 *nities described in the preceding sen-*
 17 *tence, and shall reasonably reflect the*
 18 *racial and ethnic composition of the*
 19 *communities.*

20 *“(IV) PERSONS WHO ARE DIS-*
 21 *PROPORTIONATELY ADVERSELY AF-*
 22 *FFECTED BY FACILITY CONTAMINA-*
 23 *TION.—The regulations shall require*
 24 *special efforts to award grants to mem-*
 25 *bers of the communities who are or his-*

1 *torically have been disproportionately*
2 *adversely affected by facility contami-*
3 *nation.*

4 “(V) *BACKGROUND.*—*The regula-*
5 *tions shall require that, where possible,*
6 *participants in a group that receives a*
7 *grant under this paragraph shall have*
8 *backgrounds in fields of study related*
9 *to the scientific and technical issues*
10 *common to covered facilities, or have*
11 *practical experience related to the pro-*
12 *gram under this Act.*

13 “(iv) *FACILITIES.*—*The regulations*
14 *shall require that in determining the*
15 *amount of the grants, the Administrator*
16 *shall consider factors to be established by*
17 *the Administrator, including the number*
18 *and complexity of covered facilities in each*
19 *State.*

20 “(E) *STATE LIMIT ON GRANTS.*—*The Ad-*
21 *ministrator may not award more than 1 grant*
22 *under this paragraph for a State for the same*
23 *fiscal year.*

24 “(3) *FUNCTIONS.*—*A Citizen Information and*
25 *Access Office for a State shall assist the Adminis-*

1 *trator in the efforts of the Administrator to dissemi-*
2 *nate information, notify citizens of public meetings,*
3 *and notify potential Community Working Group*
4 *members, and shall serve as an information clearing-*
5 *house in the State by providing information and de-*
6 *scriptions as described in paragraph (1)(C)(iii) or*
7 *(4). In performing the functions described in the pre-*
8 *ceding sentence, a Citizen Information and Access Of-*
9 *fice shall carry out each of the following information*
10 *functions, as appropriate, with respect to the State in*
11 *which such office is established:*

12 *“(A) INFORMATION ON EXISTENCE OF COV-*
13 *ERED FACILITIES.—The Citizen Information and*
14 *Access Office shall inform citizens of the existence*
15 *of covered facilities in the State.*

16 *“(B) DESCRIPTION OF PROCESS.—The Citi-*
17 *zen Information and Access Office shall provide*
18 *citizens with a description of the process for*
19 *identifying covered facilities and for undertaking*
20 *response actions under this Act and of the legal*
21 *rights of citizens within the process. The descrip-*
22 *tion may include identification of resources, in-*
23 *cluding Technical Assistance Grants under sub-*
24 *section (e), that are available to assist a commu-*
25 *nity that is affected by a covered facility in par-*

1 *ticipating effectively in the process. The descrip-*
 2 *tion shall be provided in a manner that is easily*
 3 *understood by the community, considering any*
 4 *unique cultural needs of the community, includ-*
 5 *ing presentation of information orally and dis-*
 6 *tribution of information in languages other than*
 7 *English, as appropriate.*

8 *“(C) INFORMATION ON COMMUNITY WORK-*
 9 *ING GROUPS.—The Citizen Information and Ac-*
 10 *cess Office shall provide to citizens information*
 11 *relating to the potential for establishing or exist-*
 12 *ence of a Community Working Group.*

13 *“(D) INFORMATION ON COVERED FACILI-*
 14 *TIES.—The Citizen Information and Access Of-*
 15 *fice shall provide to citizens, to the extent infor-*
 16 *mation becomes available, with respect to each*
 17 *covered facility in the State, a description of the*
 18 *location and characteristics of the facility, the*
 19 *hazardous substances, pollutants, and contami-*
 20 *nants present, the known exposure pathways,*
 21 *and the steps being taken to assess the risk pre-*
 22 *sented by the facility.*

23 *“(E) INFORMATION ON ALTERNATIVE WATER*
 24 *SUPPLIES OR RELOCATION ASSISTANCE.—The*
 25 *Citizen Information and Access Office shall pro-*

1 *vide to citizens information relating to the possi-*
2 *bility, where relevant, that a community that is*
3 *affected by a covered facility may qualify to re-*
4 *ceive an alternative water supply or relocation*
5 *assistance under this Act.*

6 “(F) *INFORMATION ON RISKS.*—The Citizen
7 *Information and Access Office shall disseminate*
8 *information regarding the risks presented by a*
9 *covered facility. In the event that the Citizen In-*
10 *formation and Access Office identifies any con-*
11 *flict in such information, or any apparent dif-*
12 *ference in such information, the Citizen Informa-*
13 *tion and Access Office shall submit the informa-*
14 *tion to the Administrator for review before dis-*
15 *tributing the information to citizens. On receipt*
16 *of the information, the Administrator shall rec-*
17 *oncile, where possible, the conflict or differences.*

18 “(G) *RECORDS.*—The Citizen Information
19 *and Access Office shall maintain records of the*
20 *status of each covered facility in the State and*
21 *any health data generated concerning any Na-*
22 *tional Priorities List facility in the State. The*
23 *facility data maintained by the Citizen Informa-*
24 *tion and Access Office shall also include—*

1 “(i) a record of any institutional con-
2 trols at covered facilities in the State;

3 “(ii) any annual health data generated
4 in connection with each covered facility in
5 the State;

6 “(iii) information on the location of
7 each covered facility on the State Registry;

8 “(iv) to the extent available, informa-
9 tion on the hazardous substances or pollut-
10 ants or contaminants present at each cov-
11 ered facility in the State, including the vol-
12 ume of the hazardous substances or pollut-
13 ants or contaminants;

14 “(v) information on the exposure path-
15 ways, current exposure (if any), potential
16 future exposure, and risks to human health
17 or the environment presented by each such
18 facility, after submitting any conflicting in-
19 formation, or any apparent differences in
20 information, to the Administrator for rec-
21 onciliation as provided in subparagraph
22 (F);

23 “(vi) information on protective con-
24 centration levels established for each such
25 facility;

1 “(vii) the biennial report from the En-
2 vironmental Justice Study prepared pursu-
3 ant to subsection (i); and

4 “(viii) any report generated during the
5 review conducted in accordance with section
6 121(c).

7 “(H) INFORMATION REGARDING EFFECTIVE-
8 NESS OF RESPONSE ACTIONS.—The Citizen In-
9 formation and Access Office shall collect avail-
10 able information from the Administrator or other
11 Federal or State agencies regarding the contin-
12 ued effectiveness of removal and remedial actions
13 taken in the State.

14 “(4) REQUIREMENT.—If a Citizen Information
15 and Access Office distributes information from a
16 source other than the Federal Government, in carry-
17 ing out activities under this subsection, the Citizen
18 Information and Access Office shall clearly identify
19 the source of the information.

20 “(5) REGULATIONS.—The Administrator shall
21 promulgate regulations relating to carrying out Citi-
22 zen Information and Access Offices, which regulations
23 shall—

24 “(A) require the Citizen Information and
25 Access Offices to conduct the activities of the Cit-

1 *izen Information and Access Offices in a manner*
2 *consistent with State and Federal law, including*
3 *open government laws and other public notice*
4 *and participation requirements;*

5 *“(B) ensure that each Citizen Information*
6 *and Access Office is accountable for the proper*
7 *conduct of the functions of the office and the ex-*
8 *penditure of the funds received through the grant*
9 *awarded under paragraph (2); and*

10 *“(C) establish financial accountability re-*
11 *quirements and termination procedures for the*
12 *Citizen Information and Access Offices.*

13 *“(6) FEDERAL OVERSIGHT OF CITIZEN INFORMA-*
14 *TION AND ACCESS OFFICES.—*

15 *“(A) EVALUATION.—No less often than an-*
16 *nually, the Administrator shall conduct an eval-*
17 *uation of the performance of each Citizen Infor-*
18 *mation and Access Office after consultation with*
19 *the Governing Board as provided in paragraph*
20 *(7)(C). Based on such evaluation, the Adminis-*
21 *trator shall require the Citizen Information and*
22 *Access Office to implement improvements in the*
23 *activities carried out by the Office, as appro-*
24 *priate.*

1 “(B) *REPORT.—Each Citizen Information*
2 *and Access Office shall annually submit a report*
3 *to the Administrator regarding the grant pro-*
4 *gram established under paragraph (2) and shall*
5 *certify in the report that all funds used under*
6 *such paragraph by the Citizen Information and*
7 *Access Office have been used in compliance with*
8 *the requirements of this subsection.*

9 “(C) *VERIFICATION BY INSPECTOR GEN-*
10 *ERAL.—The Inspector General of the Environ-*
11 *mental Protection Agency shall periodically re-*
12 *view the programs carried out under this sub-*
13 *section and reports made under this paragraph*
14 *and shall verify the accuracy of the certifications*
15 *contained in the reports.*

16 “(D) *CONSEQUENCES OF FAILURE.—If the*
17 *Inspector General of the Environmental Protec-*
18 *tion Agency is unable to verify the certification*
19 *provided in any 2 consecutive annual reports*
20 *made under this paragraph for any particular*
21 *grant, the Administrator shall terminate the*
22 *grant.*

23 “(7) *CITIZEN INFORMATION AND ACCESS OFFICE*
24 *NATIONAL GOVERNING BOARD.—*

1 “(A) *ESTABLISHMENT.*—*There is estab-*
2 *lished a Citizen Information and Access Office*
3 *National Governing Board.*

4 “(B) *MEMBERSHIP.*—

5 “(i) *IN GENERAL.*—*The Governing*
6 *Board shall consist of 10 members, ap-*
7 *pointed by the Administrator.*

8 “(ii) *NOMINATIONS.*—*Any citizen who*
9 *resides in a community affected by a cov-*
10 *ered facility may submit to the Adminis-*
11 *trator a nomination of 1 or more persons*
12 *for membership on the Governing Board.*

13 “(iii) *APPOINTMENTS.*—*The Adminis-*
14 *trator shall appoint citizens from such com-*
15 *munities to the Governing Board. The Ad-*
16 *ministrator shall appoint 1 such citizen*
17 *from each region served by a regional office*
18 *of the Environmental Protection Agency to*
19 *the Governing Board.*

20 “(iv) *MEMBER QUALIFICATION.*—*As*
21 *appropriate, the Administrator shall ensure*
22 *that the Governing Board shall include—*

23 “(aa) *appointees that represent*
24 *communities that, collectively, are af-*

1 *ected by a variety of National Prior-*
2 *ities List facilities; and*

3 “(bb) *appointees that represent*
4 *communities that, collectively, are af-*
5 *ected by a variety of State Registry*
6 *facilities.*

7 *Each such class of appointees shall have a*
8 *demonstrated commitment to the needs of*
9 *the citizens in the communities described in*
10 *the preceding sentence, and shall reasonably*
11 *reflect the racial and ethnic composition of*
12 *the communities.*

13 “(v) *PERSONS WHO ARE DISPROPOR-*
14 *TIONATELY ADVERSELY AFFECTED BY FA-*
15 *CILITY CONTAMINATION.*—*The Adminis-*
16 *trator shall make special efforts to appoint*
17 *to the Governing Board 1 or more citizens*
18 *who are or historically have been dispropor-*
19 *tionately adversely affected by facility con-*
20 *tamination.*

21 “(vi) *BACKGROUND.*—*Where possible,*
22 *the appointees shall have backgrounds in*
23 *fields of study related to the scientific and*
24 *technical issues common to covered facili-*

1 *ties, or have practical experience related to*
2 *the program under this Act.*

3 “(vii) *TERMS.*—*Members of the Gov-*
4 *erning Board shall serve for staggered*
5 *terms, for a period determined by the Ad-*
6 *ministrator.*

7 “(viii) *VACANCIES.*—*Any vacancy in*
8 *the Governing Board shall not affect the*
9 *powers of the Governing Board, but shall be*
10 *filled in the same manner as the original*
11 *appointment.*

12 “(C) *DUTIES.*—*The Governing Board*
13 *shall—*

14 “(i) *nominate groups of citizens who*
15 *reside in communities affected by covered*
16 *facilities for grants under paragraph (2), in*
17 *accordance with the regulations described in*
18 *paragraph (2)(D);*

19 “(ii) *consult with the Administrator*
20 *before the Administrator awards grants*
21 *under paragraph (2);*

22 “(iii) *consult with the Administrator*
23 *before the Administrator conducts evalua-*
24 *tions described in paragraph (6)(A), receive*
25 *information from the evaluations, and pro-*

1 *vide recommendations for the improvements*
2 *described in paragraph (6)(A); and*

3 “(iv) *prepare and submit to the Ad-*
4 *ministrator an annual report regarding the*
5 *activities carried out by the Citizen Infor-*
6 *mation and Access Offices.*

7 “(D) *ADMINISTRATION.—*

8 “(i) *COMPENSATION AND TRAVEL EX-*
9 *PENSES.—*

10 “(I) *COMPENSATION.—Each mem-*
11 *ber of the Governing Board who is not*
12 *an officer or employee of the Federal*
13 *Government shall be compensated at a*
14 *rate equal to the daily equivalent of the*
15 *annual rate of basic pay prescribed for*
16 *level IV of the Executive Schedule*
17 *under section 5315 of title 5, United*
18 *States Code, for each day (including*
19 *travel time) during which such member*
20 *is engaged in the performance of the*
21 *duties of the Governing Board. All*
22 *members of the Governing Board who*
23 *are officers or employees of the United*
24 *States shall serve without compensa-*
25 *tion in addition to that received for*

1 *their services as officers or employees of*
2 *the United States.*

3 “(II) *TRAVEL EXPENSES.*—The
4 *members of the Governing Board shall*
5 *be allowed travel expenses, including*
6 *per diem in lieu of subsistence, at rates*
7 *authorized for employees of agencies*
8 *under subchapter I of chapter 57 of*
9 *title 5, United States Code, while away*
10 *from the homes or regular places of*
11 *business of the members in the per-*
12 *formance of services for the Governing*
13 *Board.*

14 “(ii) *FACILITIES, SUPPLIES, AND PER-*
15 *SONNEL.*—

16 “(I) *IN GENERAL.*—Upon the re-
17 *quest of the Governing Board, the Ad-*
18 *ministrator shall provide to the Gov-*
19 *erning Board any facilities, supplies,*
20 *and personnel necessary for the Gov-*
21 *erning Board to carry out the respon-*
22 *sibilities of the Governing Board under*
23 *this paragraph.*

24 “(II) *DETAILS.*—In the case of a
25 *detail of a Federal Government em-*

1 *ployee under subclause (I), the em-*
2 *ployee may be detailed to the Govern-*
3 *ing Board without reimbursement. The*
4 *detail shall be without interruption or*
5 *loss of civil service status or privilege.*

6 “(iii) *HEARINGS.—The Governing*
7 *Board may hold such hearings, sit and act*
8 *at such times and places, take such testi-*
9 *mony, and receive such evidence as the Gov-*
10 *erning Board considers advisable to carry*
11 *out this paragraph.*

12 “(iv) *INFORMATION FROM FEDERAL*
13 *AGENCIES.—The Governing Board may se-*
14 *cure directly from any Federal department*
15 *or agency such information as the Govern-*
16 *ing Board considers necessary to carry out*
17 *this paragraph. Upon request of the Govern-*
18 *ing Board, the head of such department or*
19 *agency shall furnish such information to the*
20 *Governing Board.*

21 “(v) *POSTAL SERVICES.—The Govern-*
22 *ing Board may use the United States mails*
23 *in the same manner and under the same*
24 *conditions as other departments and agen-*
25 *cies of the Federal Government.*

1 “(vi) *TERMINATION.*—*The Governing*
2 *Board shall terminate 5 years after the date*
3 *of the establishment of the Governing Board.*

4 “(8) *CITIZEN INFORMATION AND ACCESS OM-*
5 *BUDSMEN AND COMMUNITY WORKING GROUPS FOR*
6 *TRIBAL PEOPLES.*—*In awarding grants under para-*
7 *graph (2), the Administrator may award a separate*
8 *grant to members of an Indian tribe that are affected*
9 *by a facility on the National Priorities List and that*
10 *comply with the requirements of paragraph (2). Not-*
11 *withstanding the receipt of such a grant by an Indian*
12 *tribe, the Citizen Information and Access Office for*
13 *the State involved shall be responsible for carrying*
14 *out the functions described in paragraph (3) for mem-*
15 *bers of Indian tribes as well as other citizens in the*
16 *State. Members of Indian tribes may establish Com-*
17 *munity Working Groups under subsection (g) regard-*
18 *less of whether a tribal Citizen Information and Ac-*
19 *cess Office or other tribal program relating to this Act*
20 *exists.*

21 “(9) *DEFINITIONS.*—*As used in this subsection:*

22 “(A) *EDUCATIONAL OR INFORMATIONAL OR-*
23 *GANIZATION.*—*The term ‘educational or informa-*
24 *tional organization’ means a group of individ-*
25 *uals organized and operated exclusively for edu-*

1 *cational or informational purposes, no part of*
2 *the net earnings of which inures to the benefit of*
3 *any private shareholder or individual, no sub-*
4 *stantial part of the activities of which is at-*
5 *tempting to influence legislation, and that does*
6 *not participate in, or intervene in (including the*
7 *publishing or distributing of statements), any*
8 *political campaign on behalf of (or in opposition*
9 *to) any candidate for public office.*

10 *“(B) COVERED FACILITY.—As used in this*
11 *subsection, the term ‘covered facility’ means a fa-*
12 *cility on the National Priorities List or a State*
13 *Registry.*

14 *“(C) GOVERNING BOARD.—The term ‘Gov-*
15 *erning Board’ means the Citizen Information*
16 *and Access Office National Governing Board es-*
17 *tablished in paragraph (7).*

18 *“(i) ENVIRONMENTAL JUSTICE STUDY.—*

19 *“(1) REPORT BY THE ADMINISTRATOR.—The Ad-*
20 *ministrator shall prepare an Environmental Justice*
21 *Study and submit to Congress a report containing the*
22 *results of the study within 2 years after the date of*
23 *enactment of the Superfund Reform Act of 1994 and*
24 *every 2 years thereafter. The report also shall be pro-*
25 *vided to the Citizen Information and Access Offices.*

1 *The Administrator and Citizen Information and Ac-*
2 *cess Offices shall ensure that copies of the report are*
3 *made available to the public.*

4 “(2) *CONTENT OF THE REPORT.*—The report
5 *shall include a comparative analysis of information*
6 *on priority setting, response actions, and public par-*
7 *ticipation conducted under this Act in light of the*
8 *population, race, ethnicity, and income characteris-*
9 *tics of the community involved with respect to each*
10 *facility.*

11 “(3) *EVALUATION.*—The Administrator shall
12 *evaluate the information in the report to determine*
13 *whether the priority setting, response actions, and*
14 *public participation were conducted in a fair and eq-*
15 *uitable manner and identify program areas that re-*
16 *quire improvements or modification.*

17 “(4) *ACTIONS BASED ON EVALUATION.*—The Ad-
18 *ministrator shall institute the necessary improve-*
19 *ments or modifications to address any deficiencies*
20 *identified in the report prepared under this sub-*
21 *section.”.*

22 **SEC. 103. HAZARD RANKING SYSTEM.**

23 (a) *SCORING.*—Section 105 (42 U.S.C. 9605) is
24 *amended—*

1 (1) by adding at the end the following new sub-
2 sections:

3 “(h) *HAZARD RANKING SYSTEM.*—In setting priorities
4 under subsection (a)(8), the President—

5 “(1) shall group facilities together, even if they
6 are not adjacent or geographically juxtaposed, and
7 score them as a single facility where more than 1 fa-
8 cility listed on the State Registry results in hazardous
9 substance exposures to the same population;

10 “(2) may take into account, to the maximum ex-
11 tent technically feasible, any history of exposure to
12 hazardous substances in communities, regardless of
13 the source of exposure, in placing facilities on the Na-
14 tional Priorities List;

15 “(3) shall take into account the use of land or
16 waterways for subsistence, religious, spiritual, or cul-
17 tural practices that result in additional exposures, in
18 placing facilities on the National Priorities List; and

19 “(4) shall conduct interviews with persons af-
20 fected by the facilities and living in the communities
21 likely to be affected by the facilities and solicit their
22 input and information in the hazard ranking system
23 evaluation.

24 “(i) *ENVIRONMENTAL JUSTICE FACILITY SCORING.*—
25 The Administrator shall evaluate major urban areas and

1 *any other areas where environmental justice concerns may*
2 *warrant special attention (such as tribal lands of Indian*
3 *tribes or poor rural communities) and identify 5 facilities*
4 *in each region served by a regional office of the Environ-*
5 *mental Protection Agency that are, or that should be, on*
6 *the State Registry and that are likely to warrant inclusion*
7 *on the National Priorities List. These facilities shall be ac-*
8 *corded a priority in evaluation for listing and scoring on*
9 *the National Priorities List, and shall be evaluated for such*
10 *listing within 2 years after the date of enactment of this*
11 *subsection.”; and*

12 *(2) in subsection (a)—*

13 *(A) by striking “and” at the end of para-*
14 *graph (9);*

15 *(B) by striking the period at the end of*
16 *paragraph (10) and inserting a semi colon; and*

17 *(C) by inserting the following new para-*
18 *graph after paragraph (10):*

19 *“(11) a process and procedure for reviewing peti-*
20 *tions to evaluate or reevaluate a facility not on the*
21 *National Priorities List for inclusion on the National*
22 *Priorities List where paragraphs (1), (2), and (3) of*
23 *subsection (h) are relevant.”.*

1 (b) *EXCEPTIONS TO LIMITATIONS ON RESPONSE AC-*
2 *TIONS.—Section 104(a)(4) (42 U.S.C. 9604(a)(4)) is*
3 *amended—*

4 (1) *by striking “section, the” and inserting the*
5 *following: “section—*

6 *“(1) the”; and*

7 (2) *by striking the period at the end and insert-*
8 *ing the following: “; or*

9 *“(2) if a facility was placed on the National Pri-*
10 *orities List solely because of a history of exposure of*
11 *a community to 1 or more hazardous substances, as*
12 *described in section 105(h)(2), the President may re-*
13 *spond under this section to a release or threat of re-*
14 *lease, occurring outside the boundaries of the facility,*
15 *of 1 or more of the hazardous substances from the*
16 *source of the exposure, except that, for purposes of this*
17 *paragraph, the President—*

18 *“(A) may not take any action under section*
19 *106, or any action relating to the recovery of re-*
20 *sponse costs under section 107, with respect to*
21 *the response; and*

22 *“(B) may not incur greater response costs*
23 *in conducting response actions outside the*
24 *boundaries of the facility than are incurred for*

1 *response actions inside the boundaries of the fa-*
 2 *cility.”.*

3 **SEC. 104. HEALTH AUTHORITIES.**

4 *(a) IN GENERAL.—Section 104(i) (42 U.S.C. 9604(i))*
 5 *is amended by striking all preceding subparagraph (A) of*
 6 *paragraph (1) and inserting the following:*

7 “(i) *HEALTH AUTHORITIES.—*

8 *“(1) IN GENERAL.—The Secretary of Health and*
 9 *Human Services (referred to in this subsection as the*
 10 *‘Secretary’) shall, in cooperation with the Adminis-*
 11 *trator, the Commissioner of Food and Drugs, the Ad-*
 12 *ministrator of Occupational Safety and Health, the*
 13 *Secretary of Transportation, and appropriate State*
 14 *and local health officials, implement the health au-*
 15 *thorities of this Act. The Secretary shall be the succes-*
 16 *sor to the Agency for Toxic Substances and Disease*
 17 *Registry. The Secretary shall—”.*

18 *(b) PREPARATION OF LIST OF HAZARDOUS SUB-*
 19 *STANCES.—Section 104(i)(2)(A) (42 U.S.C. 9604(i)(2)(A))*
 20 *is amended by striking “the Administrator of the Agency*
 21 *for Toxic Substances and Disease Registry (ATSDR)” and*
 22 *inserting “the Secretary”.*

23 *(c) CONFORMING AMENDMENTS.—Section 104(i) (42*
 24 *U.S.C. 9604(i)) is amended—*

1 (1) in paragraphs (2)(B), (3), (5), (7), (8), (9),
 2 (10), (12), (13), (14), (15), (17), and (18) by striking
 3 “Administrator of ATSDR” each place it appears
 4 and inserting “Secretary”;

5 (2) in paragraph (3), by striking “Adminis-
 6 trator of ATSDR’s” and inserting “Secretary’s”;

7 (3) in the first sentence of paragraph (4), by
 8 striking “Administrator of the ATSDR” and insert-
 9 ing “Secretary”;

10 (4) in paragraph (10), by striking “the activities
 11 of ATSDR” and inserting “the activities of the Sec-
 12 retary”; and

13 (5) in the last sentence of paragraph (13), by
 14 striking “the Agency for Toxic Substances and Dis-
 15 ease Registry” and inserting “the Secretary”.

16 (d) *USES OF FUND.*—Section 111(c)(4) (42 U.S.C.
 17 9611(c)(4)) is amended by striking “(relating to ATSDR)”.

18 (e) *CITIZENS SUITS.*—Section 310(a)(2) (42 U.S.C.
 19 9659(a)(2)) is amended by striking “Administrator of the
 20 ATSDR” and inserting “Secretary of Health and Human
 21 Services”.

22 (f) *NATIONAL REGISTRY.*—Section 104(i)(1) (42
 23 U.S.C. 9604(i)(1)) is amended by striking subparagraph
 24 (A) and inserting the following new subparagraph:

1 “(A) in cooperation with the States, for sci-
2 entific purposes and public health purposes, es-
3 tablish and maintain a national registry of per-
4 sons exposed to toxic substances;”.

5 (g) *TOXICOLOGICAL PROFILES*.—The penultimate sen-
6 tence of section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended
7 by striking “, but no less often than once every 3 years”.

8 (h) *HEALTH ASSESSMENTS*.—Section 104(i)(6) (42
9 U.S.C. 9604(i)(6)) is amended—

10 (1) in subparagraph (A)—

11 (A) by striking “Administrator of ATSDR”
12 and inserting “Administrator”; and

13 (B) by adding at the end the following new
14 sentence: “The Administrator may enter into
15 contracts or cooperative agreements with the Sec-
16 retary or with appropriate State or local public
17 health officials to conduct any health assessment
18 required or authorized under this paragraph.”;

19 (2) in subparagraph (B), by striking “Adminis-
20 trator of ATSDR” each place it appears and insert-
21 ing “Administrator or the Secretary”;

22 (3) in subparagraph (C)—

23 (A) in the first sentence, by striking “the
24 Administrator of ATSDR, in consultation with

1 *the Administrator of EPA,” and inserting “the*
2 *Administrator”;* and

3 *(B) except as provided in subparagraph*
4 *(A), by striking “the Administrator of ATSDR”*
5 *each place it appears and inserting “the Admin-*
6 *istrator”;*

7 *(4) in subparagraph (D)—*

8 *(A) by striking “of ATSDR”; and*

9 *(B) by striking “promptly and, to the maxi-*
10 *mum extent practicable, before the” and insert-*
11 *ing “prior to”;*

12 *(5) in subparagraph (E)—*

13 *(A) in the first sentence, by striking “the*
14 *Administrator of ATSDR and”;* and

15 *(B) except as provided in subparagraph*
16 *(A), by striking “of ATSDR” each place it ap-*
17 *pears;*

18 *(6) in subparagraph (F), by striking the last*
19 *sentence;*

20 *(7) in the second sentence of subparagraph (G),*
21 *by striking “of ATSDR”;*

22 *(8) in subparagraph (H)—*

23 *(A) in the first sentence, by striking “the*
24 *Administrator of ATSDR shall provide the Ad-*

1 *ministrator of EPA” and inserting “the Admin-*
2 *istrator shall provide the Secretary”; and*

3 *(B) in the second sentence—*

4 *(i) by striking “the Administrator of*
5 *ATSDR shall so notify the Administrator of*
6 *EPA who” and inserting “the Adminis-*
7 *trator”; and*

8 *(ii) by striking “of ATSDR may rec-*
9 *ommend to the Administrator of EPA that*
10 *the site be accorded” and inserting “may*
11 *accord the site”; and*

12 *(9) by adding at the end the following new sub-*
13 *paragraphs:*

14 *“(I) DATA COLLECTION.—In preparing*
15 *health assessments under this paragraph, the Ad-*
16 *ministrator shall actively collect data from Com-*
17 *munity Working Groups and from other sources*
18 *in communities affected or potentially affected by*
19 *releases of hazardous substances or pollutants or*
20 *contaminants regarding exposure, relevant*
21 *human activities, and other factors.*

22 *“(J) DESIGN OF HEALTH ASSESSMENTS.—*
23 *The Administrator shall design health assess-*
24 *ments that take into account the needs and con-*
25 *ditions of communities described in subpara-*

1 graph (I). Community-based research models and
 2 local health resources shall be used for the health
 3 assessments, where practicable. Each Community
 4 Working Group (or, where no Community Work-
 5 ing Group exists, community described in sub-
 6 paragraph (I)) shall be permitted to play an ac-
 7 tive and early role in reviewing health assess-
 8 ment designs. In preparing the designs, emphasis
 9 shall be placed on collection of actual exposure
 10 data, and sources of multiple exposure shall be
 11 considered.”.

12 (i) *REDUCTION AND MITIGATION OF RISKS.*—The last
 13 sentence of section 104(i)(11) (42 U.S.C. 9604(i)(11)) is
 14 amended by striking “of ATSDR”.

15 (j) *PERSONNEL FOR HEALTH ASSESSMENTS.*—Section
 16 104(i) (42 U.S.C. 9604(i)) is amended by striking para-
 17 graph (16) and inserting the following new paragraph:

18 “(16) *PERSONNEL FOR HEALTH ASSESS-*
 19 *MENTS.*—The President shall provide adequate per-
 20 sonnel for the Environmental Protection Agency to
 21 conduct health assessments under paragraph (6),
 22 which shall consist of not fewer than 20 employees.”.

23 **SEC. 105. DETERMINING HEALTH EFFECTS.**

24 Section 104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is
 25 amended by striking “designed to determine the health ef-

1 *fects (and techniques for development of methods to deter-*
 2 *mine such health effects) of such substance” and inserting*
 3 *“conducted directly or by means such as cooperative agree-*
 4 *ments with and grants to appropriate public and nonprofit*
 5 *institutions. The research shall be designed to determine the*
 6 *health effects (and techniques for development of methods*
 7 *to determine such health effects) of the substance”.*

8 ***SEC. 106. COMMUNITY HEALTH PROGRAMS.***

9 *Section 104(i) (42 U.S.C. 9604(i)) is amended by add-*
 10 *ing at the end the following new paragraph:*

11 *“(19) COORDINATION WITH SECRETARY OF*
 12 *HEALTH AND HUMAN SERVICES ON HEALTH-RELATED*
 13 *ACTIVITIES.—*

14 *“(A) IN GENERAL.—The Secretary of*
 15 *Health and Human Services (referred to in this*
 16 *paragraph as the ‘Secretary’) shall coordinate*
 17 *with the Administrator to improve the availabil-*
 18 *ity of environmental health services in commu-*
 19 *nities that may have been, or may be, subject to*
 20 *exposure to a release of hazardous substances or*
 21 *pollutants or contaminants from a facility that*
 22 *is listed or proposed for listing on the National*
 23 *Priorities List, or listed on a State Registry, and*
 24 *that have a medically underserved population*
 25 *(as designated under section 330 of the Public*

1 *Health Service Act (42 U.S.C. 254c)) (referred to*
2 *in this paragraph as ‘medically underserved*
3 *communities’). Coordinated activities carried out*
4 *under this paragraph shall include—*

5 “(i) *facilitating the provision of envi-*
6 *ronmental health services to medically un-*
7 *derserved communities;*

8 “(ii) *developing and implementing a*
9 *training program to educate health care*
10 *providers in the field of environmental*
11 *health;*

12 “(iii) *collecting environmental health*
13 *data; and*

14 “(iv) *enhancing the exchange of infor-*
15 *mation among individuals involved in the*
16 *field of environmental health.*

17 “(B) *COORDINATION OF ENVIRONMENTAL*
18 *HEALTH SERVICES UNDER THE PUBLIC HEALTH*
19 *SERVICE ACT.—The Administrator shall provide*
20 *information to the Secretary to assist the Sec-*
21 *retary in identifying medically underserved com-*
22 *munities. The Secretary shall provide environ-*
23 *mental health services to the communities using*
24 *existing medical clinics and health care delivery*
25 *systems, or establishing additional clinics and*

1 *health care delivery systems, as appropriate,*
2 *using authority and funding provided under the*
3 *Public Health Service Act (42 U.S.C. 201 et*
4 *seq.). Environmental health services may include*
5 *testing, diagnosis, counseling, and treatment of*
6 *individuals in the communities.*

7 “(C) *TRAINING PROGRAM.*—*The Secretary*
8 *shall coordinate with the Administrator to de-*
9 *velop and implement a program designed to*
10 *train health care providers in the field of envi-*
11 *ronmental health. The program shall be designed*
12 *to build capability and expertise in the medical*
13 *care community with respect to environmental*
14 *health. The program shall include educating*
15 *health care providers in the testing, diagnosis,*
16 *counseling, and treatment of individuals poten-*
17 *tially exposed to toxic substances and the preven-*
18 *tion of illnesses potentially linked to the expo-*
19 *sure.*

20 “(D) *ENVIRONMENTAL HEALTH DATA.*—

21 “(i) *COLLECTION.*—*The Secretary shall*
22 *collect environmental health data related to*
23 *exposure to releases of hazardous substances*
24 *or pollutants or contaminants from a facil-*
25 *ity that is listed or proposed for listing on*

1 the National Priorities List, or listed on a
 2 State Registry. The Secretary shall promul-
 3 gate standards for maintaining the con-
 4 fidentiality of the data, and shall, at a min-
 5 imum, ensure that the data is presented in
 6 a manner that does not identify by name
 7 the individual with respect to whom the in-
 8 formation is collected. The Secretary shall
 9 provide all nonconfidential data to the pub-
 10 lic.

11 “(ii) ASSESSING RISK FROM MULTIPLE
 12 CONTAMINANTS.—The Administrator, in co-
 13 ordination with the Secretary, shall, as ap-
 14 propriate, evaluate data collected under
 15 clause (i) to improve methodologies, stand-
 16 ards, and procedures for evaluating risk as-
 17 sociated with exposure to multiple contami-
 18 nants.

19 “(E) DISSEMINATION OF INFORMATION.—
 20 The Secretary, in consultation with the Adminis-
 21 trator, shall design a system that shall be imple-
 22 mented by the Secretary to enhance the exchange
 23 of information among individuals involved in
 24 the field of environmental health. The system
 25 shall include a publicly available database con-

1 *taining toxicological and epidemiological data,*
 2 *including results of health effect studies and in-*
 3 *formation repositories (such as Citizen Informa-*
 4 *tion and Access Offices as provided for in section*
 5 *117(h)).”.*

6 **SEC. 107. PUBLIC HEALTH RECOMMENDATIONS IN REME-**
 7 **DIAL ACTIONS.**

8 *Section 121(c) (42 U.S.C. 9621(c)) is amended in the*
 9 *first sentence by inserting after “remedial action” the sec-*
 10 *ond time it appears the following: “, including public health*
 11 *recommendations and decisions resulting from activities*
 12 *under section 104(i),”.*

13 **SEC. 108. RIGHTS TO PARTICIPATE.**

14 *Section 113 (42 U.S.C. 9613) is amended by adding*
 15 *at the end of subsection (h) the following:*

16 *“(6) Notwithstanding the limitations on timing*
 17 *in paragraph (4), an action under section 310 by any*
 18 *person who is a member of the community but has*
 19 *not been identified by the Administrator as a poten-*
 20 *tially responsible party with respect to a facility, to*
 21 *compel compliance with a nondiscretionary act or*
 22 *duty set forth in section 117(f) with respect to the fa-*
 23 *cility, which action shall be subject to each of the fol-*
 24 *lowing requirements:*

1 “(A) *Wherever practicable, such an action*
2 *shall be heard by the court involved, and any re-*
3 *lief shall be granted, within 30 days after the*
4 *date on which the Administrator files an answer*
5 *or other response in such action.*

6 “(B) *In such an action, the court shall have*
7 *no jurisdiction—*

8 “(i) *to grant any relief other than to*
9 *order performance of the nondiscretionary*
10 *act or duty concerned;*

11 “(ii) *to grant any relief that delays or*
12 *modifies a response action;*

13 “(iii) *to grant any relief if the asserted*
14 *noncompliance is minor or without preju-*
15 *dice to the person bringing the action; and*

16 “(iv) *to grant any relief unless the per-*
17 *son bringing the action—*

18 “(I) *provides notice to the Admin-*
19 *istrator of the alleged failure to comply*
20 *with section 117(f), in such form as the*
21 *Administrator shall prescribe, within*
22 *30 days after the person knew or*
23 *should have known about the alleged*
24 *failure to comply; and*

1 “(II) commences the action no less
 2 than 60 days and no more than 70
 3 days after providing the notice to the
 4 Administrator in accordance with
 5 subclause (I).

6 *Nothing in paragraphs (1) through (6) shall authorize*
 7 *relief except to the extent available under, and rel-*
 8 *evant to, the actions referred to in such paragraphs.”.*

9 **SEC. 109. TRANSITION.**

10 (a) *EFFECTIVE DATE IN GENERAL.*—*Except as pro-*
 11 *vided in subsection (b), this title and the amendments made*
 12 *by this title shall become effective upon the enactment of*
 13 *this Act.*

14 (b) *SPECIAL RULE.*—*The requirements of paragraphs*
 15 *(1) through (5) of section 117(f) and paragraph (1) of sec-*
 16 *tion 117(g), of the Comprehensive Environmental Response,*
 17 *Compensation, and Liability Act of 1980 (42 U.S.C. 9617*
 18 *(f) and (g)), as added by sections 101 and 102, shall become*
 19 *effective 180 days after the date of enactment of this Act.*

20 **TITLE II—STATE ROLES**

21 **SEC. 201. DELEGATED STATE RESPONSE ACTIONS AND AU-**
 22 **THORIZED STATE RESPONSE PROGRAMS.**

23 (a) *IN GENERAL.*—*Title I (42 U.S.C. 9601 et seq.) is*
 24 *amended by adding after section 126 the following new sec-*
 25 *tions:*

1 ***“SEC. 127. DELEGATED STATE RESPONSE ACTIONS.***

2 *“(a) IN GENERAL.—*

3 *“(1) APPLICATION FOR FUNDING TO TAKE*
4 *PREREMEDIAL ACTION AT NON-NPL FACILITIES.—A*
5 *State may apply to the Administrator to take or re-*
6 *quire any of the preremedial actions described in*
7 *clauses (i), (ii), and (iv) of paragraph (3)(A), under*
8 *a contract or cooperative agreement as provided in*
9 *this section at any non-federally owned or operated*
10 *facility within the boundaries of the State that is not*
11 *listed or proposed for listing on the National Prior-*
12 *ities List.*

13 *“(2) APPLICATION FOR AUTHORITY TO TAKE RE-*
14 *SPONSE ACTION AT NPL FACILITIES.—A State may*
15 *apply to the Administrator for a delegation of author-*
16 *ity to take or require any of the response actions de-*
17 *scribed in paragraph (3) under a contract or coopera-*
18 *tive agreement as provided in this section at any non-*
19 *federally owned or operated facility within the bound-*
20 *aries of the State that is listed or proposed for listing*
21 *on the National Priorities List.*

22 *“(3) RESPONSIBILITIES AND AUTHORITIES.—*

23 *“(A) IN GENERAL.—Subject to section*
24 *201(b) of the Superfund Reform Act of 1994, the*
25 *Administrator may enter into such a contract or*
26 *cooperative agreement with a qualified State to*

1 *delegate to the State the authority, to the extent*
2 *provided in the contract or agreement—*

3 “(i) to perform site characterization
4 including a preliminary assessment or site
5 inspection, perform a search for potentially
6 responsible parties, or conduct information
7 collection under section 104(e), for a facility
8 described in paragraph (1) or (2);

9 “(ii) to conduct hazard ranking system
10 scoring for the facility in preparation for a
11 determination regarding whether the facil-
12 ity shall be listed on the National Priorities
13 List;

14 “(iii) to conduct, or to ensure the con-
15 duct of and provide oversight with respect
16 to the conduct of, a remedial investigation
17 and feasibility study for the facility;

18 “(iv) to conduct, or to ensure the con-
19 duct of and provide oversight with respect
20 to the conduct of, a non-time critical re-
21 moval action at the facility;

22 “(v) to select a remedial action for the
23 facility and issue a record of decision;

24 “(vi) to conduct, or to ensure the con-
25 duct of and provide oversight with respect

1 to the conduct of, a remedial design for the
2 facility;

3 “(vii) to implement, or to ensure the
4 implementation of and provide oversight
5 with respect to the implementation of, a re-
6 medial action at the facility;

7 “(viii) to conduct, or to ensure the con-
8 duct of and provide oversight with respect
9 to the conduct of, operation and mainte-
10 nance at the facility;

11 “(ix) to conduct enforcement activities,
12 in accordance with subsection (e), with re-
13 spect to the facility;

14 “(x) to initiate and apply allocation
15 procedures under section 129 with respect to
16 response costs relating to the facility; and

17 “(xi) to take such other response action
18 under this Act, other than a response action
19 prohibited under subparagraph (B), as the
20 Administrator may determine to be appro-
21 priate.

22 “(B) LIMITATION.—The Administrator may
23 not enter into such a contract or agreement to
24 delegate to a State the authority described in sec-
25 tion 106, or to make a final determination with

1 *respect to listing a facility on, or deleting a fa-*
2 *cility from, the National Priorities List.*

3 “(4) *APPROVAL OF APPLICATION.*—*The Adminis-*
4 *trator shall enter into such a contract or cooperative*
5 *agreement if the Administrator determines that the*
6 *State—*

7 “(A) *meets the qualification requirements*
8 *set forth in the regulations promulgated pursu-*
9 *ant to subsection (b); and*

10 “(B) *with respect to authority to select re-*
11 *medial actions and apply allocation procedures,*
12 *meets the qualification requirements set forth in*
13 *subsection (c).*

14 “(5) *NOTICE AND COMMENT.*—*The Administrator*
15 *shall enter into such a contract or cooperative agree-*
16 *ment for the State to perform or ensure the perform-*
17 *ance of all or substantially all the response action de-*
18 *scribed in paragraph (3)(A) at a site after providing*
19 *notice and an opportunity for public comment.*

20 “(b) *REGULATIONS.*—*The Administrator, in consulta-*
21 *tion with the States and not later than 1 year after the*
22 *date of enactment of this section, shall promulgate regula-*
23 *tions to implement this section. The regulations shall pro-*
24 *vide such additional qualifications for a contract or cooper-*
25 *ative agreement under this section as the Administrator*

1 *considers reasonable, including qualifications applicable to*
 2 *particular types of response actions. The regulations shall*
 3 *include a requirement that, in order for a State to qualify*
 4 *for a contract or cooperative agreement with respect to a*
 5 *facility under this section, the State may not be a major*
 6 *potentially responsible party with respect to that facility.*

7 “(c) *QUALIFICATION REQUIREMENTS WITH RESPECT*
 8 *TO SELECTION OF REMEDIAL ACTION AND APPLICATION OF*
 9 *ALLOCATION PROCEDURES.*—*For purposes of subsection*
 10 *(a)(4)(B), with respect to a contract or cooperative agree-*
 11 *ment under this section for authority to select a remedial*
 12 *action or to apply the allocation procedures under section*
 13 *129, the Administrator shall enter into the contract or coop-*
 14 *erative agreement if the Administrator also determines each*
 15 *of the following:*

16 “(1) *The State has the capability to select reme-*
 17 *dial actions or to apply the allocation procedures, re-*
 18 *spectively, including adequate legal authority to enter*
 19 *into the contract or cooperative agreement, financial*
 20 *and personnel resources, organization, and expertise.*

21 “(2) *The State demonstrates experience in ade-*
 22 *quately performing or ensuring the adequate perform-*
 23 *ance of similar response actions.*

24 “(d) *REQUIREMENTS FOR SELECTION OF REMEDIAL*
 25 *ACTION.*—*In any contract or cooperative agreement under*

1 *this section that provides for a State to select remedial ac-*
 2 *tions, the State shall agree to select such remedial actions*
 3 *in accordance with all of the procedures and requirements*
 4 *set forth in sections 113, 117, and 121, the national contin-*
 5 *gency plan, and any other relevant regulations issued and*
 6 *guidelines adopted by the Administrator.*

7 “(e) *STATE AUTHORITY REGARDING ENFORCEMENT*
 8 *OF SELECTED REMEDIAL ACTION.*—

9 “(1) *IN GENERAL.*—A State that selects a reme-
 10 *dial action pursuant to a contract or cooperative*
 11 *agreement entered into under this section shall have*
 12 *the authority to enforce the requirements of such re-*
 13 *medial action pursuant to section 121(f)(4).*

14 “(2) *STATE ENFORCEMENT.*—Such State also
 15 *shall have the authority to enforce compliance with*
 16 *any standard, regulation, condition, requirement,*
 17 *order, or final determination that was issued or made*
 18 *by the State under the administrative process of the*
 19 *State with respect to the remedial action selected pur-*
 20 *suant to a contract or agreement entered into under*
 21 *this section. Where the remedial action addresses an*
 22 *imminent and substantial danger to human health or*
 23 *the environment, and a responsible party, without*
 24 *sufficient cause, willfully violates, or fails or refuses*
 25 *to comply with, such a standard, regulation, condi-*

1 *tion, requirement, order, or final determination, such*
2 *State also may seek civil penalties not to exceed*
3 *\$25,000 per day. Such penalties shall accrue from the*
4 *date of the violation after the State issues its final de-*
5 *termination or directs a responsible party to perform*
6 *a response action. Such State may commence an ac-*
7 *tion seeking such penalties pursuant to section*
8 *121(f)(4). The court with jurisdiction over the action*
9 *may grant such penalties unless the standard, regula-*
10 *tion, condition, requirement, order, or final deter-*
11 *mination is arbitrary, capricious, or contrary to law*
12 *when reviewed upon the administrative record pre-*
13 *sented by the State. Judicial review of any response*
14 *action taken, secured, or selected by a State under*
15 *this section shall be limited with respect to timing,*
16 *standard and scope of review, and availability of*
17 *remedies, in the same manner, and to the same ex-*
18 *tent, as judicial review of response actions taken, se-*
19 *cured, or selected by the President is limited under*
20 *subsections (h) and (j) of section 113. There shall be*
21 *no such limitation on the authority of the President*
22 *to bring an action to ensure performance of a re-*
23 *sponse action under subsection (g).*

24 *“(3) WAIVER.—In addition, if expressly provided*
25 *in the contract or cooperative agreement, such State*

1 *may waive a Federal requirement applicable to the*
2 *remedial action in accordance with section*
3 *121(d)(7)(D).*

4 *“(f) REQUIREMENTS FOR ENFORCEMENT AND ALLOCA-*
5 *TION.—*

6 *“(1) ENFORCEMENT.—In the case of a contract*
7 *or cooperative agreement entered into under this sec-*
8 *tion providing for a State to conduct an enforcement*
9 *action with respect to a facility, the contract or coop-*
10 *erative agreement shall require the State to provide*
11 *for expedited settlements under section 122.*

12 *“(2) APPLICATION OF ALLOCATION PROCEDURE.—*
13 *DURES.—*

14 *“(A) IN GENERAL.—In the case of a con-*
15 *tract or cooperative agreement entered into*
16 *under this section providing for a State to initi-*
17 *ate an enforcement action with respect to a facil-*
18 *ity subject to mandatory allocation pursuant to*
19 *section 129(a)(1), the contract or cooperative*
20 *agreement shall require the State to apply allo-*
21 *cation procedures with respect to the facility, in*
22 *accordance with the requirements of paragraphs*
23 *(2) through (7) of section 129(a). The contract or*
24 *cooperative agreement shall require the State to*

1 *certify each of the following with respect to the*
2 *facility:*

3 “(i) *POTENTIALLY RESPONSIBLE PARTY*
4 *SEARCH.—The State has completed a poten-*
5 *tially responsible party search substantially*
6 *consistent with section 129(c) and will*
7 *make the results of that search available to*
8 *the allocator and the parties.*

9 “(ii) *NOTIFICATION TO TRUSTEES.—*
10 *The State has notified Federal, State, and*
11 *tribal natural resource trustees of the com-*
12 *mencement of the allocation process and,*
13 *pursuant to sections 104(b)(2) and*
14 *122(j)(1), of potential damages to natural*
15 *resources.*

16 “(iii) *SUBJECT TO MANDATORY ALLO-*
17 *CATION.—The facility would be subject to*
18 *mandatory allocation under section*
19 *129(a)(1) if the President were conducting*
20 *the response action.*

21 “(B) *RESPONSIBILITIES.—After the State*
22 *has made the certifications under subparagraph*
23 *(A), the Administrator shall initiate an alloca-*
24 *tion in accordance with the terms of section 129.*
25 *The Administrator may assign to the State, by*

1 *cooperative agreement or otherwise, any respon-*
2 *sibilities to conduct the allocation, except that*
3 *the Administrator and Attorney General shall re-*
4 *tain their authority relating to orphan share*
5 *funding as provided by this paragraph and in*
6 *section 129, including the timing and terms of*
7 *payment.*

8 *“(C) ALLOCATOR’S REPORT.—The State*
9 *may accept or reject the allocator’s report on the*
10 *same basis as provided in section 129(l). If the*
11 *State does not reject the allocation, the State*
12 *shall use the allocator’s report as the basis of*
13 *State settlements under this Act. The State may*
14 *recover the costs of the allocation pursuant to*
15 *State law or the provisions of this Act.*

16 *“(D) FEDERAL PARTICIPATION.—The Presi-*
17 *dent, through either the Administrator or the At-*
18 *torney General, or both, may participate in any*
19 *phase of an allocation proceeding where an or-*
20 *phan share is identified according to the stand-*
21 *ards set forth in section 129(h)(4).*

22 *“(E) ORPHAN SHARE FUNDING.—If the*
23 *State accepts an allocator’s report as the basis*
24 *for its settlements, and the allocator’s report*
25 *identifies an orphan share subject to Federal*

1 *funding, the State shall apply for such funding*
2 *by certifying each of the following to the Admin-*
3 *istrator and the Attorney General:*

4 “(i) *The allocation presents a reason-*
5 *able basis for resolving responsibility for the*
6 *facility.*

7 “(ii) *The assignment of an orphan*
8 *share is consistent with the standards that*
9 *are applicable under section 129(h)(4).*

10 “(F) *DETERMINATION.—The Administrator*
11 *and the Attorney General shall accept a State’s*
12 *request for orphan share funding supported by*
13 *an allocator’s report and the certifications de-*
14 *scribed in subparagraph (E), unless the Admin-*
15 *istrator and Attorney General determine, within*
16 *120 days after the request by the State, that the*
17 *allocation does not meet the standards set forth*
18 *in section 129. Such determination shall be*
19 *made in the same manner, and shall be subject*
20 *to the same limitations, as set forth in section*
21 *129.*

22 “(G) *CONTENTS.—The contract or coopera-*
23 *tive agreement shall provide that the State may*
24 *use the orphan share funding only to fund re-*
25 *sponse actions through settlement or to reimburse*

1 *parties performing work in excess of the share*
2 *assigned to the parties in allocation, in accord-*
3 *ance with section 129. The level and scope of*
4 *such reimbursement may not exceed the reim-*
5 *bursement level and scope available under section*
6 *129(o).*

7 *“(H) RECOVERY.—The State may recover*
8 *funds provided through the orphan share fund-*
9 *ing, from nonsettling responsible parties pursu-*
10 *ant to State law or the provisions of this Act.*
11 *Seventy-five percent of such recovered funds pro-*
12 *vided by the President through such a contract*
13 *or cooperative agreement shall be returned to the*
14 *Fund. The remaining 25 percent shall be used*
15 *for any other response action under this Act by*
16 *the recovering State, including cost sharing re-*
17 *quirements under section 104(c)(11), or shall be*
18 *returned to the Fund. The State may recover any*
19 *reasonable attorney’s fees and costs from*
20 *nonsettling responsible parties pursuant to State*
21 *law or the provisions of this Act.*

22 *“(I) CERTIFICATION.—Not later than 1 year*
23 *after receipt of funds provided through the or-*
24 *phan share funding, and annually thereafter*
25 *until 1 year after the last day of the period for*

1 *which the State receives a delegation of authority*
2 *under this section, the Governor of the State*
3 *shall submit to the Administrator—*

4 “(i) *a certification that states that the*
5 *State used the funds in accordance with the*
6 *requirements of subparagraph (H); and*

7 “(ii) *information describing the man-*
8 *ner in which the State used the funds.*

9 “(3) *COVENANTS.—In a case in which either the*
10 *President, acting under the authority of this Act, or*
11 *a State, acting pursuant to a contract or cooperative*
12 *agreement under this section, has responsibility for*
13 *selecting a response action at a facility listed or pro-*
14 *posed for listing on the National Priorities List and*
15 *enters an administrative or judicial settlement to re-*
16 *solve the liability of responsible parties at the facility,*
17 *the President or the State may confer, in accordance*
18 *with requirements relating to covenants of sections*
19 *122 and 129, a covenant that will preclude some or*
20 *all administrative or judicial action by both the*
21 *President and the State to recover response costs or*
22 *to compel response actions at the facility with respect*
23 *to matters addressed in the settlement. Notwithstand-*
24 *ing the preceding sentence, such covenants shall not be*

1 *binding on the governmental entity that did not con-*
2 *fer the covenant to the extent that—*

3 “(A) *the covenant purports to address natu-*
4 *ral resource damages;*

5 “(B) *the President or the State has not been*
6 *provided notice of, and an opportunity to par-*
7 *ticipate in, the settlement concerning the re-*
8 *sponse action; or*

9 “(C) *the President or the State objects to the*
10 *settlement within 120 days after the date of sig-*
11 *nature for the record of decision or receipt of no-*
12 *tice of the settlement, whichever is later.*

13 “(g) *TERMS AND CONDITIONS; ENFORCEMENT.—*

14 “(1) *IN GENERAL.—A contract or cooperative*
15 *agreement under this section shall be subject to such*
16 *terms and conditions as the Administrator may pre-*
17 *scribe. If a State fails to comply with a requirement*
18 *of a contract or cooperative agreement, the Adminis-*
19 *trator, after 90 days notice to the affected State, may*
20 *bring an action in the appropriate United States dis-*
21 *trict court seeking to ensure performance of the re-*
22 *sponse action, or to recover any funds advanced or*
23 *any costs incurred because of the breach.*

1 “(2) *SPECIFIC TERMS.*—A contract or coopera-
2 tive agreement under this section shall include each of
3 the following requirements:

4 “(A) A requirement that the State shall ex-
5 ercise any authority conferred by this section or
6 the contract or cooperative agreement on behalf
7 of the State, and not on behalf of or in the name
8 of the Administrator, the President, or the Unit-
9 ed States.

10 “(B) A requirement that the State shall
11 have and maintain sufficient legal authority
12 under applicable State law to enter into the con-
13 tract or cooperative agreement.

14 “(C) A requirement that the Administrator
15 shall retain authority to terminate and recoup
16 funding, and to terminate the contract or coop-
17 erative agreement, if the State fails to perform the
18 contract or cooperative agreement in a manner
19 consistent with this Act. At least 90 days before
20 terminating any such contract or cooperative
21 agreement with a State, the Administrator shall
22 provide to the State a written explanation of the
23 reasons for the proposed termination and afford
24 an opportunity to the State to discuss the termi-

1 *nation and to propose actions to correct any de-*
2 *ficiencies.*

3 “(D) A requirement imposing a non-
4 *discretionary duty on the Administrator to per-*
5 *form or compel expeditious performance of re-*
6 *sponse actions under the contract or cooperative*
7 *agreement if the State fails to comply with the*
8 *terms of the contract or cooperative agreement.*

9 “(h) EFFECT OF SECTION.—

10 “(1) LISTED AND PROPOSED FACILITIES.—This
11 *section shall not affect the authority of the President*
12 *to take response actions at facilities listed or proposed*
13 *for listing on the National Priorities List with respect*
14 *to which the State has not received a delegation of au-*
15 *thority pursuant to this section. At facilities listed or*
16 *proposed for listing on the National Priorities List*
17 *with respect to which the State has received such a*
18 *delegation, the President may take response actions*
19 *that the President determines to be necessary to pre-*
20 *vent an imminent and substantial endangerment to*
21 *public health, welfare, or the environment, if the State*
22 *fails, after a written request by the Administrator, to*
23 *take such response actions in a timely manner, as de-*
24 *termined by the Administrator.*

1 “(2) *FEDERAL FACILITIES.*—This section shall
2 not affect the authority of the United States under
3 this Act to seek recovery of costs incurred by the Unit-
4 ed States, subject to any covenant that is binding on
5 the United States in accordance with subsection
6 (f)(3), or implement response actions at facilities
7 owned or operated by or under the jurisdiction, cus-
8 tody, or control of any department, agency, or instru-
9 mentality of the United States (including the execu-
10 tive, legislative, and judicial branches of the Federal
11 Government).

12 “(i) *INTERVENTION.*—The President may intervene as
13 a matter of right in any civil action brought by or against
14 a State with respect to the authorities delegated under this
15 section, for the purpose of representing the Federal interest
16 with respect to the authorities.

17 “(j) *DEFINITIONS.*—As used in this section:

18 “(1) *NON-FEDERALLY OWNED OR OPERATED FA-*
19 *CILITY.*—The term ‘non-federally owned or operated
20 facility’ means a facility that is not owned or oper-
21 ated by or under the jurisdiction, custody, or control
22 of any department, agency, or instrumentality of the
23 United States (including the executive, legislative,
24 and judicial branches of the Federal Government).

1 “(2) *TIME CRITICAL AND NON-TIME CRITICAL RE-*
 2 *MOVAL ACTIONS.*—The terms ‘time critical removal
 3 *action’ and ‘non-time critical removal action’ mean*
 4 *actions described in paragraphs (2) and (4), respec-*
 5 *tively, of section 300.415(m) of title 40, Code of Fed-*
 6 *eral Regulations (as in effect on July 1, 1993).*

7 **“SEC. 128. STUDY OF AUTHORIZATION OF STATES TO**
 8 **CARRY OUT SUPERFUND.**

9 *“The Administrator shall conduct a study of the fea-*
 10 *sibility of authorizing States to use their own laws to carry*
 11 *out the provisions of this Act in lieu of the Federal program*
 12 *established under this Act.”.*

13 **(b) DELEGATION TRANSITION RULES.—**

14 **(1) RECORD OF DECISION.—**

15 **(A) STATE LEAD.**—If, on the date of enact-
 16 *ment of this Act, a record of decision has been*
 17 *signed for a non-federally owned or operated fa-*
 18 *cility on the National Priorities List, and a*
 19 *State has served as the lead agency for the facil-*
 20 *ity, the Administrator shall, on application of*
 21 *the State, delegate the authority described in sec-*
 22 *tion 127 of the Comprehensive Environmental*
 23 *Response, Compensation, and Liability Act of*
 24 *1980 (as added by subsection (a)) to the State*
 25 *with respect to the facility. The Administrator*

1 *shall not make such a delegation if the Adminis-*
2 *trator determines that the State has not dem-*
3 *onstrated the qualifications required by section*
4 *127(a)(4) of such Act.*

5 (B) *FEDERAL LEAD.—If, on such date, a*
6 *record of decision has been signed for a non-fed-*
7 *erally owned or operated facility on the National*
8 *Priorities List, and the Environmental Protec-*
9 *tion Agency has served as the lead agency for the*
10 *facility, the Administrator shall not delegate*
11 *such authority to a State with respect to the fa-*
12 *cility, unless the Administrator determines that*
13 *the delegation will not significantly delay com-*
14 *pletion of a response action at the facility.*

15 (2) *PRIOR TO RECORD OF DECISION.—*

16 (A) *STATE LEAD.—If, on such date—*

17 (i) *a non-federally owned or operated*
18 *facility has been listed on the National Pri-*
19 *orities List but no record of decision has*
20 *been signed for the facility;*

21 (ii) *a State has served as the lead*
22 *agency for the facility; and*

23 (iii) *the State can demonstrate the*
24 *qualifications required by section 127(a)(4)*
25 *of such Act;*

1 *the Administrator shall, on application of the*
2 *State, delegate such authority to the State with*
3 *respect to the facility, unless the Administrator*
4 *determines that the delegation will significantly*
5 *delay completion of a response action at the fa-*
6 *cility.*

7 *(B) FEDERAL LEAD.—*

8 *(i) PRESUMPTION.—If, on the date of*
9 *enactment of this Act—*

10 *(I) a non-federally owned or oper-*
11 *ated facility has been listed on the Na-*
12 *tional Priorities List but no record of*
13 *decision has been signed for the facil-*
14 *ity; and*

15 *(II) the Environmental Protection*
16 *Agency has served as the lead agency*
17 *for the facility;*

18 *the Administrator shall not delegate such*
19 *authority to the State with respect to the fa-*
20 *cility, unless the State demonstrates to the*
21 *Administrator that the delegation will not*
22 *significantly delay completion of a response*
23 *action at the facility and demonstrates the*
24 *qualifications required by section 127(a)(4)*
25 *of such Act.*

1 (ii) *RELIANCE ON EXISTING RESPONSE*
2 *ACTION ACTIVITIES.*—Any State that re-
3 ceives such a delegation for a facility as de-
4 scribed in this subparagraph shall, in con-
5 ducting a response action at the facility,
6 rely on the remedial investigation and fea-
7 sibility study and any related studies or ac-
8 tivities conducted with respect to the site by
9 the Environmental Protection Agency prior
10 to the date of the delegation.

11 (3) *DEFINITIONS.*—As used in this subsection:

12 (A) *ADMINISTRATOR; FACILITY; RE-*
13 *SPONSE.*—The terms “Administrator”, “facil-
14 ity”, and “response” have the meanings given
15 the terms in section 101 of the Comprehensive
16 Environmental Response, Compensation, and Li-
17 ability Act of 1980 (42 U.S.C. 9601).

18 (B) *LEAD AGENCY.*—The term “lead agen-
19 cy” means a lead agency, as used within the na-
20 tional contingency plan.

21 (C) *NON-FEDERALLY OWNED OR OPERATED*
22 *FACILITY.*—The term “non-federally owned or
23 operated facility” has the meaning given the
24 term in section 127(j)(1) of the Comprehensive

1 *Environmental, Response, Compensation, and*
2 *Liability Act of 1980.*

3 (c) *APPLICATION OF STATE INVOLVEMENT AUTHORI-*
4 *TIES.—Section 121(f) (42 U.S.C. 9621(f)) is amended by*
5 *adding at the end the following new paragraph:*

6 “(5) *APPLICATION.—This subsection shall apply*
7 *with respect to remedial actions at a facility if the*
8 *Administrator has not delegated the authority de-*
9 *scribed in section 127 to the State with respect to the*
10 *facility.”.*

11 **SEC. 202. STATE COST SHARE.**

12 *Section 104(c) (42 U.S.C. 9604(c)) is amended by add-*
13 *ing at the end the following new paragraphs:*

14 “(10) *EXISTING CONTRACTS AND COOPERATIVE*
15 *AGREEMENTS.—The requirements of paragraphs (3),*
16 *(6), and (7) shall apply only to contracts and cooper-*
17 *ative agreements pursuant to subsection (d) entered*
18 *into prior to the date of enactment of the Superfund*
19 *Reform Act of 1994.*

20 “(11) *STATE COST SHARE.—After the date of en-*
21 *actment of the Superfund Reform Act of 1994, the Ad-*
22 *ministrator may reject any request for funding under*
23 *this section or section 127, except for an emergency*
24 *removal action, unless the State in which the release*
25 *or threatened release occurs has entered into a con-*

1 *tract or cooperative agreement pursuant to this sub-*
 2 *section or section 127, as appropriate, that provides*
 3 *assurances, considered adequate by the Administrator,*
 4 *that—*

5 *“(A) the State will pay, or ensure payment*
 6 *of, 15 percent of the cost incurred by the Fund*
 7 *of such response action or funding, including 15*
 8 *percent of the operation and maintenance costs;*
 9 *and*

10 *“(B) the State will ensure oversight of any*
 11 *operation and maintenance of the funded re-*
 12 *sponse action.*

13 *Nothing in this Act shall be construed to require any*
 14 *State to contribute to orphan share funding.”.*

15 **SEC. 203. SITING.**

16 *Section 104(c)(9) (42 U.S.C. 9604(c)(9)) is amended*
 17 *to read as follows:*

18 *“(9) SITING.—Effective 1 year after the date of*
 19 *enactment of the Superfund Reform Act of 1994, the*
 20 *President shall not take or fund any remedial action*
 21 *pursuant to this section or section 127, unless the*
 22 *State in which the release occurs submits a report de-*
 23 *scribing its plans for adequate treatment, storage, and*
 24 *disposal capacity of hazardous wastes generated with-*

1 *in the State, in accordance with guidelines issued by*
 2 *the Administrator.”.*

3 **SEC. 204. STATE REGISTRY.**

4 *Section 105(a)(8) (42 U.S.C. 9605(a)(8)) is*
 5 *amended—*

6 *(1) by adding “and” at the end of subparagraph*
 7 *(B); and*

8 *(2) by inserting after subparagraph (B) the fol-*
 9 *lowing new subparagraph:*

10 *“(C) a requirement that each State shall main-*
 11 *tain and make available to the public a list of facili-*
 12 *ties in the State that are known to present a risk to*
 13 *human health or the environment due to the release*
 14 *or threatened release of hazardous substances or pol-*
 15 *lutants or contaminants, and that each State, in con-*
 16 *sultation with the Administrator and other appro-*
 17 *priate Federal agencies, shall update such listing on*
 18 *an annual basis;”.*

19 **SEC. 205. CONFORMING AND MISCELLANEOUS AMEND-**
 20 **MENTS.**

21 *(a) TRANSFER OF SECTION 121(e)(2).—*

22 *(1) ACTION.—Section 121(f) (42 U.S.C. 9621(f))*
 23 *is amended by inserting after paragraph (3) the fol-*
 24 *lowing new paragraph:*

1 “(4) *ACTION TO ENFORCE*.—A State may bring
2 an action to enforce any Federal or State standard,
3 requirement, criterion, or limitation to which the re-
4 medial action is required to conform, including any
5 operation and maintenance requirement or other ac-
6 tion necessary to ensure the integrity of a remedy,
7 under this Act in the United States district court for
8 the district in which the facility is located.”.

9 (2) *COMPLIANCE*.—Section 122(d)(1) (42 U.S.C.
10 9622(d)(1)) is amended by adding at the end the fol-
11 lowing new subparagraph:

12 “(D) *COMPLIANCE*.—Any such consent de-
13 cree shall require the parties to attempt expedi-
14 tiously to resolve disagreements concerning im-
15 plementation of the remedial action informally
16 with the appropriate Federal and State agencies.
17 If the parties agree, the consent decree may pro-
18 vide for administrative enforcement. Each con-
19 sent decree shall also contain stipulated penalties
20 for violations of the decree in an amount not to
21 exceed \$25,000 per day, which may be enforced
22 by either the President or the State. Such stipu-
23 lated penalties shall not be construed to impair
24 or affect the authority of the court to order com-

1 *pliance with the specific terms of any such de-*
 2 *cree.”.*

3 (b) *SECTION 126(a).*—*Section 126(a) (42 U.S.C.*
 4 *9626(a)) is amended by inserting after “List)” the follow-*
 5 *ing: “, section 127 (regarding delegation of authority under*
 6 *contracts and cooperative agreements), and the Voluntary*
 7 *Environmental Cleanup and Economic Redevelopment Act*
 8 *of 1994”.*

9 (c) *SECTION 310(a).*—*Section 310(a) (42 U.S.C.*
 10 *9659(a)) is amended, in the matter preceding paragraph*
 11 *(1)—*

12 (1) *by inserting “(including any State)” after*
 13 *“person”; and*

14 (2) *by striking “his” and inserting “the per-*
 15 *son’s”.*

16 (d) *TRANSITION.*—*Section 104(d) (42 U.S.C. 9604(d))*
 17 *is amended by adding at the end the following new para-*
 18 *graph:*

19 “(5) *STATE REGISTRIES.*—

20 “(A) *ESTABLISHMENT OF GRANT PRO-*
 21 *GRAM.*—*The Administrator shall establish a pro-*
 22 *gram to provide grants to assist States in estab-*
 23 *lishing State Registries.*

24 “(B) *GRANTS.*—*In carrying out the pro-*
 25 *gram established under subparagraph (A), the*

1 *Administrator shall, subject to the availability of*
 2 *appropriations, make a grant to the Governor of*
 3 *each State that submits to the Administrator,*
 4 *and obtains approval of, an application that*
 5 *meets such requirements as the Administrator*
 6 *may establish.”.*

7 **SEC. 206. STATE ROLE AT FEDERAL FACILITIES.**

8 *(a) TRANSFER OF AUTHORITIES.—Section 120(g) (42*
 9 *U.S.C. 9620(g)) is amended to read as follows:*

10 *“(g) TRANSFER OF AUTHORITIES.—*

11 *“(1) STATE APPLICATION FOR TRANSFER OF AU-*
 12 *THORITIES.—A State may apply to the Adminis-*
 13 *trator to exercise the authorities vested in the Admin-*
 14 *istrator under this section at any or all facilities*
 15 *owned or operated by or under the jurisdiction, cus-*
 16 *tody, or control of any department, agency, or instru-*
 17 *mentality of the United States (including the execu-*
 18 *tive, legislative, and judicial branches of the Federal*
 19 *Government), including the authority—*

20 *“(A) to publish a timetable and deadlines*
 21 *for completion of any remedial investigation and*
 22 *feasibility study;*

23 *“(B) to review and approve all documents*
 24 *prepared in connection with any such investiga-*
 25 *tion and study;*

1 “(C) to select and approve remedies; and

2 “(D) to enter into and enforce, through ju-
3 dicial or administrative means, agreements, or-
4 ders, and consent decrees entered into pursuant
5 to this Act.

6 “(2) *TRANSFER OF AUTHORITIES.*—The Admin-
7 istrator shall enter into a contract or cooperative
8 agreement to transfer the authorities described in
9 paragraph (1) to a State if the Administrator deter-
10 mines each of the following:

11 “(A) The State has the ability to exercise
12 such authorities in accordance with this Act, in-
13 cluding adequate legal authority, financial and
14 personnel resources, organization, and expertise.

15 “(B) The State demonstrates experience in
16 adequately exercising, or ensuring the adequate
17 exercise of, similar authorities.

18 “(3) *EFFECT OF AUTHORIZATION UNDER SOLID*
19 *WASTE DISPOSAL ACT.*—In the review by the Admin-
20 istrator of an application of a State for transfer of
21 authorities under this subsection, if the State is au-
22 thorized to implement a State hazardous waste pro-
23 gram pursuant to section 3006 of the Solid Waste
24 Disposal Act (42 U.S.C. 6926), each of the following
25 provisions shall apply:

1 “(A) *SIGNATORIES TO INTERAGENCY*
2 *AGREEMENTS.*—With respect to a State that is a
3 signatory to an interagency agreement under
4 subsection (e)(2) that is in effect on the date of
5 enactment of the Superfund Reform Act of 1994,
6 the Administrator, in making the determinations
7 referred to in paragraph (2), shall accord sub-
8 stantial weight to the State’s hazardous waste
9 program authorization and the Administrator’s
10 findings in approving such authorization.

11 “(B) *STATES AUTHORIZED TO IMPLEMENT*
12 *CORRECTIVE ACTIONS.*—With respect to a State
13 whose authorization under such section 3006 in-
14 cludes authorization to implement the corrective
15 action provisions of the Solid Waste Disposal Act
16 (42 U.S.C. 6901 et seq.), the Administrator shall
17 approve the application and provide for the or-
18 derly transfer of authorities as expeditiously as
19 practicable, but in no case later than 6 months
20 after the date of receipt of the application, unless
21 the parties agree to another deadline.

22 “(4) *EFFECT OF TRANSFER.*—Any State to
23 which authorities are transferred under this sub-
24 section shall not be deemed to be an agent of the

1 *President but shall exercise such authorities in its*
2 *own name.*

3 “(5) *DEADLINES.*—*Except as provided in para-*
4 *graph (3)(B), the Administrator shall make a deter-*
5 *mination on an application from a State under this*
6 *subsection not later than 90 days after the date the*
7 *Administrator receives the application.*

8 “(6) *WITHDRAWAL OF AUTHORITIES.*—

9 “(A) *DETERMINATION.*—*The Administrator*
10 *may withdraw the authorities transferred under*
11 *this subsection in whole or in part if the Admin-*
12 *istrator determines—*

13 “(i) *that the State, in whole or in part,*
14 *is exercising such authorities in a manner*
15 *clearly inconsistent with the requirements of*
16 *this Act; or*

17 “(ii) *in the case of a State that was*
18 *approved under paragraph (3)(B), that the*
19 *State is no longer authorized to implement*
20 *the corrective action provisions of the Solid*
21 *Waste Disposal Act.*

22 “(B) *EXPLANATION.*—*At least 90 days be-*
23 *fore withdrawing any such transferred authori-*
24 *ties from a State, the Administrator shall pro-*
25 *vide to the State a written explanation of the*

1 *reasons for the proposed withdrawal and afford*
2 *an opportunity to the State to discuss the with-*
3 *drawal and to propose actions to correct any de-*
4 *ficiencies.*

5 “(7) *LIMITATION.—Except for authorities that*
6 *are transferred by the Administrator to a State pur-*
7 *suant to this subsection, or that are transferred by the*
8 *Administrator to an officer or employee of the Envi-*
9 *ronmental Protection Agency, no authority vested in*
10 *the Administrator under this section may be trans-*
11 *ferred, by executive order of the President or other-*
12 *wise, to any other officer or employee of the United*
13 *States or to any other person. Except as necessary to*
14 *implement the transfer of the Administrator’s au-*
15 *thorities to a State pursuant to this subsection, noth-*
16 *ing in this subsection shall be construed as altering,*
17 *modifying, or impairing in any manner any agree-*
18 *ment, permit, administrative or judicial order, decree,*
19 *or interagency agreement existing on the date of en-*
20 *actment of the Superfund Reform Act of 1994. Noth-*
21 *ing in this subsection shall affect the exercise by a*
22 *State of any other authorities that may be applicable*
23 *to facilities in such State.”.*

24 (b) *ARBITRATION OF DISPUTES INVOLVING INTER-*
25 *AGENCY AGREEMENTS.—Section 120(g) (as amended by*

1 subsection (a)) is further amended by adding at the end
2 the following new paragraph:

3 “(8) *RESOLUTION OF DISPUTES RELATING TO*
4 *INTERAGENCY AGREEMENTS.*—

5 “(A) *APPLICATION.*—In the event that au-
6 thority is transferred to a State under this sub-
7 section, the parties to any dispute relating to the
8 implementation of an interagency agreement de-
9 scribed in subsection (e)(2) shall resolve the dis-
10 pute in accordance with the provisions of sub-
11 paragraph (B).

12 “(B) *PROCESS.*—

13 “(i) *INFORMAL DISPUTE RESOLUTION*
14 *PROCESS.*—If a dispute arises among 2 or
15 more signatories to the interagency agree-
16 ment concerning the agreement, except as
17 provided in clause (iii), the signatories in-
18 volved in the dispute shall participate in
19 any informal dispute resolution process re-
20 quired by the agreement to attempt to re-
21 solve the dispute. Not later than 20 days
22 after the commencement of the informal dis-
23 pute resolution process, the signatories in-
24 volved in the dispute shall provide notice of

1 the process to the other signatories to the
2 agreement.

3 “(ii) *SELECTION OF NOMINATING ARBI-*
4 *TRATORS.*—If the signatories involved in the
5 dispute do not resolve the dispute involving
6 the interagency agreement through the in-
7 formal dispute resolution process, not later
8 than 15 days after notice is provided under
9 clause (i), each signatory to the agreement
10 shall select a nominating arbitrator, from a
11 list of available arbitrators obtained from
12 the American Arbitration Association, in
13 accordance with the Rules of the Associa-
14 tion.

15 “(iii) *SELECTION OF FINAL ARBITRA-*
16 *TOR.*—The nominating arbitrators selected
17 under clause (ii) shall jointly select a final
18 arbitrator to resolve the dispute, from a list
19 of available arbitrators obtained from the
20 American Arbitration Association, in ac-
21 cordance with the Rules of the Association.

22 “(iv) *DUTIES OF FINAL ARBITRA-*
23 *TOR.*—Except as otherwise provided in this
24 clause, the arbitrator selected under clause
25 (iii) shall perform the duties of the Admin-

1 *istrator in resolving the dispute under the*
 2 *interagency agreement. Not later than 120*
 3 *days after the arbitrator is selected under*
 4 *clause (iii), a final decision to resolve the*
 5 *dispute shall be issued by the arbitrator.*

6 “(v) *JUDICIAL REVIEW.*—A party to
 7 *the dispute may, not sooner than 120 days*
 8 *after the arbitrator is selected under clause*
 9 *(iii), bring an action seeking resolution of*
 10 *the dispute. The action shall be subject to*
 11 *the applicable provisions of section 113 (in-*
 12 *cluding subsections (b) and (h) of section*
 13 *113).*

14 “(vi) *COSTS.*—The costs of actions in-
 15 *curred under this subparagraph to resolve a*
 16 *dispute involving an interagency agreement*
 17 *shall be borne equally by signatories to the*
 18 *agreement.”.*

19 ***TITLE III—VOLUNTARY*** 20 ***ENVIRONMENTAL CLEANUP***

21 ***SEC. 301. SHORT TITLE.***

22 *This title may be cited as the “Voluntary Environ-*
 23 *mental Cleanup and Economic Redevelopment Act of*
 24 *1994”.*

1 **SEC. 302. FINDINGS AND PURPOSE.**

2 (a) *FINDINGS.*—Congress finds that—

3 (1) *past uses of land in the United States for in-*
4 *dustrial and commercial purposes have created many*
5 *sites throughout the United States that have environ-*
6 *mental contamination;*

7 (2) *Congress and the governments of States and*
8 *political subdivisions of States have enacted laws to—*

9 (A) *prevent environmental contamination;*
10 *and*

11 (B) *carry out response actions to correct*
12 *past instances of environmental contamination;*

13 (3) *many sites are minimally contaminated, do*
14 *not pose serious threats to human health or the envi-*
15 *ronment, and can be satisfactorily remediated expedi-*
16 *tiously with little government oversight;*

17 (4) *promoting the cleanup and redevelopment of*
18 *contaminated sites could lead to significant environ-*
19 *mental and economic benefits, particularly in any*
20 *case in which a cleanup can be completed quickly and*
21 *during a period of time that meets short-term busi-*
22 *ness needs;*

23 (5) *the private market demand for sites affected*
24 *by environmental contamination frequently is reduced*
25 *or eliminated, often due to uncertainties regarding li-*
26 *ability or potential cleanup costs of current owners*

1 *and prospective purchasers under Federal and State*
2 *law;*

3 *(6) the abandonment or underutilization of af-*
4 *ected sites impairs the ability of the Federal Govern-*
5 *ment and the governments of States and political sub-*
6 *divisions of States to provide economic opportunities*
7 *for the people of the United States, particularly the*
8 *poor and unemployed;*

9 *(7) the abandonment or underutilization of af-*
10 *ected sites also results in the inefficient use of public*
11 *facilities and services, as well as land and other natu-*
12 *ral resources, and extends conditions of blight in local*
13 *communities;*

14 *(8) cooperation among Federal agencies, depart-*
15 *ments and agencies of States and political subdivi-*
16 *sions of States, local community development organi-*
17 *zations, and current owners and prospective pur-*
18 *chasers of affected sites is required to accomplish*
19 *timely response actions and the redevelopment or*
20 *reuse of affected sites;*

21 *(9) there is a need for a program to—*

22 *(A) encourage voluntary cleanups of affected*
23 *sites; and*

1 (B) facilitate the establishment of programs
2 by States to foster voluntary cleanups of affected
3 sites; and

4 (10) there is a need to provide financial incen-
5 tives and assistance to characterize certain affected
6 sites and facilitate the cleanup of the sites so that the
7 sites may be redeveloped for economically beneficial
8 uses.

9 (b) *PURPOSE.*—The purpose of this title is to create
10 new business and employment opportunities through the
11 economic redevelopment of affected sites that do not pose
12 a serious threat to human health or the environment by—

13 (1) encouraging States to adopt and develop a
14 program for sites that would not be remediated under
15 other environmental laws (including regulations) in
16 effect on the date of enactment of this Act;

17 (2) encouraging local governments and private
18 parties, including local community development orga-
19 nizations, to participate in State voluntary cleanup
20 programs that facilitate expedited response actions
21 that are consistent with business needs at affected
22 sites;

23 (3) directing the Secretary and the Adminis-
24 trator to establish programs that provide financial as-
25 sistance to—

1 (A) encourage the development of State vol-
2 untary cleanup programs;

3 (B) facilitate site characterizations of cer-
4 tain affected sites; and

5 (C) encourage cleanup of appropriate sites;
6 and

7 (4) reducing transaction costs and paperwork,
8 and preventing needless duplication of effort and
9 delay at all levels of government.

10 **SEC. 303. DEFINITIONS.**

11 As used in this title (unless the context clearly requires
12 otherwise):

13 (1) *ADMINISTRATIVE COSTS.*—The term “admin-
14 istrative costs” means eligible costs that are not
15 nonadministrative costs.

16 (2) *ADMINISTRATOR.*—The term “Adminis-
17 trator” means the Administrator of the Environ-
18 mental Protection Agency.

19 (3) *AFFECTED SITE.*—

20 (A) *IN GENERAL.*—Except as provided in
21 subparagraph (B), the term “affected site” means
22 a facility that has environmental contamination
23 that—

1 (i) could prevent the timely use, devel-
2 opment, reuse, or redevelopment of the facil-
3 ity; and

4 (ii) is limited in scope or severity and
5 can be comprehensively characterized and
6 readily analyzed.

7 (B) *EXCEPTIONS.*—The term does not in-
8 clude—

9 (i) any facility that is the subject of a
10 planned or an ongoing response action
11 under the Comprehensive Environmental
12 Response, Compensation, and Liability Act
13 of 1980 (42 U.S.C. 9601 et seq.), except that
14 the term includes a facility for which a pre-
15 liminary assessment has been completed
16 and with respect to which the Adminis-
17 trator has decided not to take further re-
18 sponse action;

19 (ii) any facility included, or proposed
20 for inclusion, on the National Priorities
21 List maintained by the Administrator
22 under such Act;

23 (iii) any facility with respect to which
24 a record of decision has been issued by the

1 *President under section 104 of such Act (42*
2 *U.S.C. 9604);*

3 *(iv) any facility that is subject to cor-*
4 *rective action under section 3004(u) or*
5 *3008(h) of the Solid Waste Disposal Act (42*
6 *U.S.C. 6924(u) or 6928(h)) at the time that*
7 *an application for loan assistance with re-*
8 *spect to the facility is submitted under this*
9 *title, including any facility with respect to*
10 *which a corrective action permit or order*
11 *has been issued or modified to require the*
12 *implementation of corrective measures;*

13 *(v) any land disposal unit with respect*
14 *to which a closure notification under sub-*
15 *title C of the Solid Waste Disposal Act (42*
16 *U.S.C. 6921 et seq.) has been submitted and*
17 *closure requirements have been specified in*
18 *a closure plan or permit;*

19 *(vi) any facility at which there has*
20 *been a release of polychlorinated biphenyls*
21 *and that is subject to the requirements of*
22 *the Toxic Substances Control Act (15 U.S.C.*
23 *2601 et seq.);*

24 *(vii) any facility with respect to which*
25 *an administrative order on consent or a ju-*

1 *dicial consent decree requiring cleanup has*
 2 *been entered into by the President under—*

3 *(I) the Comprehensive Environ-*
 4 *mental Response, Compensation, and*
 5 *Liability Act of 1980 (42 U.S.C. 9601*
 6 *et seq.);*

7 *(II) the Solid Waste Disposal Act*
 8 *(42 U.S.C. 6901 et seq.);*

9 *(III) the Federal Water Pollution*
 10 *Control Act (33 U.S.C. 1251 et seq.);*

11 *(IV) the Toxic Substances Control*
 12 *Act (15 U.S.C. 2601 et seq.); or*

13 *(V) title XIV of the Public Health*
 14 *Service Act (commonly known as the*
 15 *“Safe Drinking Water Act”) (42*
 16 *U.S.C. 300f et seq.); and*

17 *(viii) any facility at which assistance*
 18 *for response activities may be obtained pur-*
 19 *suant to subtitle I of the Solid Waste Dis-*
 20 *posal Act (42 U.S.C. 6991 et seq.) from the*
 21 *Leaking Underground Storage Tank Trust*
 22 *Fund established by section 9508 of the In-*
 23 *ternal Revenue Code of 1986.*

24 *(4) CHARGE OFF.—The term “charge off”, with*
 25 *respect to a loan of a lender, means to recognize a loss*

1 *on the loan on the books of the lender in accordance*
2 *with applicable bank regulatory accounting prin-*
3 *ciples, or, if the lender is not a federally regulated*
4 *lender, generally accepted accounting principles.*

5 (5) *CONTAMINANT.*—*The term “contaminant”*
6 *includes any hazardous substance (as defined in sec-*
7 *tion 101(14) of the Comprehensive Environmental Re-*
8 *sponse, Compensation, and Liability Act of 1980 (42*
9 *U.S.C. 9601(14))) and oil (as defined in section*
10 *1001(23) of the Oil Pollution Act of 1990 (33 U.S.C.*
11 *2701(23))).*

12 (6) *CURRENT OWNER.*—*The term “current*
13 *owner” means, with respect to a voluntary cleanup,*
14 *an owner at the time of the cleanup.*

15 (7) *DISPOSAL.*—*The term “disposal” has the*
16 *meaning provided the term in section 1004(3) of the*
17 *Solid Waste Disposal Act (42 U.S.C. 6903(3)).*

18 (8) *ELIGIBLE COSTS.*—*The term “eligible costs”*
19 *means administrative and nonadministrative costs.*

20 (9) *ENVIRONMENT.*—*The term “environment”*
21 *has the meaning provided the term in section 101(8)*
22 *of the Comprehensive Environmental Response, Com-*
23 *ensation, and Liability Act of 1980 (42 U.S.C.*
24 *9601(8)).*

1 (10) *ENVIRONMENTAL CONTAMINATION.*—The
2 term “environmental contamination” means the exist-
3 ence at a facility of 1 or more contaminants that may
4 pose a risk to human health or the environment.

5 (11) *FACILITY.*—The term “facility” has the
6 meaning provided the term in section 101(9) of the
7 Comprehensive Environmental Response, Compensa-
8 tion, and Liability Act of 1980 (42 U.S.C. 9601(9)).

9 (12) *GROUND WATER.*—The term “ground
10 water” has the meaning provided the term in section
11 101(12) of such Act (42 U.S.C. 9601(12)).

12 (13) *INDIAN TRIBE.*—The term “Indian tribe”
13 has the meaning provided the term in section 101(36)
14 of such Act (42 U.S.C. 9601(36)).

15 (14) *INITIATE.*—The term “initiate”, with re-
16 spect to a cleanup action, means to commence onsite
17 construction activities at an affected site.

18 (15) *LENDER.*—The term “lender” means—

19 (A) a private depository lender;

20 (B) a private nondepository lender; or

21 (C) a State agency or a local public agency
22 that has the authority under State or local law
23 to make loans.

1 (16) *LOCAL APPLICANT*.—The term “local appli-
2 cant” means a local community development organi-
3 zation or local government.

4 (17) *LOCAL COMMUNITY DEVELOPMENT ORGANI-*
5 *ZATION*.—The term “local community development
6 organization” means a nonprofit organization that—

7 (A) has a history of serving the needs of
8 residents of the local community affected by an
9 affected site;

10 (B) maintains accountability to persons of
11 low income in the local community through sig-
12 nificant representation on the governing board of
13 the organization, and such other means as are
14 appropriate; and

15 (C) has the institutional and administrative
16 capacity for carrying out activities assisted
17 under this title (as determined by the Secretary).

18 (18) *LOCAL GOVERNMENT*.—The term “local gov-
19 ernment” has the meaning provided the term “unit of
20 general local government” in the first sentence of sec-
21 tion 102(a)(1) of the Housing and Community Devel-
22 opment Act of 1974 (42 U.S.C. 5302(a)(1)), except
23 that the term includes an Indian tribe.

24 (19) *NATURAL RESOURCES*.—The term “natural
25 resources” has the meaning provided the term in sec-

tion 101(16) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(16)).

(20) *NONADMINISTRATIVE COSTS.*—The term “nonadministrative costs” includes the costs of—

(A) oversight for a cleanup at an affected site by a contractor, current owner, or prospective purchaser;

(B) identifying the probable extent and nature of environmental contamination at the affected site, and the preferred manner of carrying out a cleanup at the affected site;

(C) the cleanup, including onsite and offsite treatment of contaminants; and

(D) monitoring ground water or other natural resources at the affected site.

(21) *NONPROFIT ORGANIZATION.*—The term “nonprofit organization” means any private, nonprofit organization (including a State or locally chartered, nonprofit organization)—

(A) that is organized under State or local laws;

(B) with respect to which no portion of the net earnings inure to the benefit of a member,

1 *founder, contributor, or individual associated*
2 *with the organization;*

3 *(C) that complies with standards of finan-*
4 *cial accountability that the Secretary determines*
5 *to be acceptable; and*

6 *(D) that carries out activities related to the*
7 *retention or expansion of employment opportuni-*
8 *ties for, and improvement of economic and social*
9 *conditions of, persons of low income.*

10 *(22) OWNER.—The term “owner” has the mean-*
11 *ing provided the term in section 101(20) of the Com-*
12 *prehensive Environmental Response, Compensation,*
13 *and Liability Act of 1980 (42 U.S.C. 9601(20)), ex-*
14 *cept that the term also includes a unit of State or*
15 *local government that acquired ownership or control*
16 *involuntarily through bankruptcy, tax delinquency,*
17 *abandonment, or other circumstances in which the*
18 *government acquires title by virtue of the functions of*
19 *the government as a sovereign.*

20 *(23) PARTICIPATING LENDER.—The term “par-*
21 *ticipating lender” means a lender that—*

22 *(A) under State or local law has the author-*
23 *ity to make loans that are assisted under section*
24 *305; and*

1 (B) *has entered into a participation agree-*
2 *ment with a participating State agency in ac-*
3 *cordance with such section.*

4 (24) *PARTICIPATING STATE AGENCY.*—*The term*
5 *“participating State agency” means a State agency*
6 *that has been selected for participation in the pro-*
7 *gram established under section 305 in accordance*
8 *with section 305(d).*

9 (25) *PERSON.*—*The term “person” has the mean-*
10 *ing provided the term in section 101(21) of the Com-*
11 *prehensive Environmental Response, Compensation,*
12 *and Liability Act of 1980 (42 U.S.C. 9601(21)).*

13 (26) *PERSONS OF LOW INCOME.*—*The term “per-*
14 *sons of low income” has the meaning provided the*
15 *term in section 102(a)(20) of the Housing and Com-*
16 *munity Development Act of 1974 (42 U.S.C.*
17 *5302(a)(20)).*

18 (27) *PROSPECTIVE PURCHASER.*—*The term*
19 *“prospective purchaser” means a prospective pur-*
20 *chaser of an affected site.*

21 (28) *RELEASE.*—*The term “release” has the*
22 *meaning provided the term in section 101(22) of the*
23 *Comprehensive Environmental Response, Compensa-*
24 *tion, and Liability Act of 1980 (42 U.S.C. 9601(22)).*

1 (29) *RESPONSE ACTION*.—The term “response
2 action” has the meaning provided the term “re-
3 sponse” in section 102(25) of such Act (42 U.S.C.
4 9601(25)).

5 (30) *REVOLVING FUND*.—The term “Revolving
6 Fund” means the Economic Redevelopment Revolving
7 Fund established under section 307.

8 (31) *SECRETARY*.—The term “Secretary” means
9 the Secretary of Housing and Urban Development.

10 (32) *SITE CHARACTERIZATION*.—

11 (A) *IN GENERAL*.—The term “site charac-
12 terization” means an investigation that deter-
13 mines the nature and extent of a release or po-
14 tential release of a hazardous substance at a site
15 and meets the requirements referred to in sub-
16 paragraph (B).

17 (B) *INVESTIGATION*.—For the purposes of
18 this paragraph, an investigation that meets the
19 requirements of this subparagraph—

20 (i) shall include—

21 (I) an onsite evaluation; and

22 (II) sufficient testing, sampling,
23 and other field data gathering activi-
24 ties to accurately analyze whether the
25 site is contaminated and the risks to

1 *human health and the environment*
 2 *posed by the release of contaminants at*
 3 *the site; and*

4 *(ii) may also include—*

5 *(I) review of existing information*
 6 *(available at the time of the review);*
 7 *and*

8 *(II) an offsite evaluation, if ap-*
 9 *propriate.*

10 *(33) STATE.—The term “State” has the meaning*
 11 *provided the term under section 101(27) of the Com-*
 12 *prehensive Environmental Response, Compensation,*
 13 *and Liability Act of 1980 (42 U.S.C. 9601(27)).*

14 *(34) VOLUNTARY CLEANUP.—The term “vol-*
 15 *untary cleanup” means a response action at an af-*
 16 *ected site—*

17 *(A) undertaken and financed by a current*
 18 *owner or prospective purchaser subject to over-*
 19 *sight and approval by a State; and*

20 *(B) with respect to which the current owner*
 21 *or prospective purchaser agrees to pay all costs*
 22 *of oversight by the State.*

23 **SEC. 304. VOLUNTARY CLEANUP GRANT PROGRAM.**

24 *(a) IN GENERAL.—*

1 (1) *ESTABLISHMENT OF GRANT PROGRAM.*—The
2 Administrator shall establish a program to provide a
3 grant to any State that submits an application that
4 is approved by the Administrator to establish or ex-
5 pand a State voluntary cleanup program that meets
6 the requirements of paragraph (3).

7 (2) *CERTIFICATION.*—In an application for a
8 grant under this section, a State shall be required to
9 certify that the voluntary cleanup program of the
10 State will meet the requirements of paragraph (3).

11 (3) *REQUIREMENTS FOR STATE VOLUNTARY*
12 *CLEANUP PROGRAM.*—A State voluntary cleanup pro-
13 gram meets the requirements of this paragraph if the
14 State—

15 (A) provides adequate opportunities for
16 public participation, including prior notice and
17 opportunity for comment, in selecting response
18 actions;

19 (B) provides technical assistance throughout
20 each voluntary cleanup;

21 (C) has the capability, through enforcement
22 or other mechanisms, of assuming the respon-
23 sibility for undertaking a cleanup if the current
24 owner or prospective purchaser fails or refuses to
25 complete the necessary cleanup;

1 (D) provides adequate oversight and has
2 adequate enforcement authorities to ensure that
3 voluntary cleanups are completed in accordance
4 with Federal and State laws, including any on-
5 going operation and maintenance or long-term
6 monitoring activities;

7 (E) provides written approval of work plans
8 for response actions to current owners and pro-
9 spective purchasers before affected sites are ac-
10 quired, and provides written certification of
11 completions for voluntary cleanups to current
12 owners and prospective purchasers; and

13 (F) provides streamlined procedures to en-
14 sure expeditious voluntary cleanups.

15 (b) GRANTS.—

16 (1) IN GENERAL.—In carrying out the program
17 established under subsection (a), the Administrator
18 shall, subject to the availability of appropriations,
19 make a grant to the Governor of each State that sub-
20 mits an application to the Administrator that meets
21 the requirements of this section to conduct a State
22 voluntary cleanup program that the Administrator
23 approves.

24 (2) GRANT AMOUNT.—The amount of a grant
25 made to a State under subsection (a) shall be—

1 (A) determined by the Administrator on the
2 basis of the financial need of the State for estab-
3 lishing or expanding a voluntary cleanup pro-
4 gram; and

5 (B) in an amount not less than \$200,000,
6 and not more than \$500,000, for each fiscal year.

7 (3) *REPORTING.*—Each State that receives a
8 grant under subsection (a) shall submit to the Admin-
9 istrator, not later than 2 years after receipt of the
10 grant, a progress report that includes a description of
11 the cleanups made in accordance with the voluntary
12 cleanup program of the State.

13 (4) *TERMINATION OF GRANTS.*—If the Adminis-
14 trator determines that a State voluntary cleanup pro-
15 gram no longer meets the requirements of subsection
16 (a)(3), the Administrator may terminate a grant
17 made to the State and require full or partial repay-
18 ment of the grant.

19 (c) *STATE CERTIFICATION.*—Not later than 1 year
20 after receipt of an initial grant, and annually thereafter,
21 each Governor of a State that receives a grant under this
22 section shall submit to the Administrator a certification
23 that states that—

24 (1) the State voluntary cleanup program meets
25 the requirements of subsection (a)(3);

1 (2) *all cleanups achieved or undertaken pursuant*
2 *to the State voluntary cleanup program fully comply*
3 *with Federal and State laws;*

4 (3) *public participation opportunities have been*
5 *adequate during the process of selecting a cleanup*
6 *method for each voluntary cleanup;*

7 (4) *voluntary cleanups achieved or undertaken*
8 *pursuant to the State voluntary cleanup program*
9 *have been undertaken in a manner that has reduced*
10 *or eliminated risks to human health and the environ-*
11 *ment to the satisfaction of the State; and*

12 (5) *for any voluntary cleanup initiated pursuant*
13 *to the State voluntary cleanup program that has in-*
14 *creased risks to human health and the environment,*
15 *the State has taken timely and appropriate steps to*
16 *reduce or eliminate the risks.*

17 (d) *VOLUNTARY RESPONSE PROGRAM.—*

18 (1) *APPLICABILITY.—This subsection shall apply*
19 *to any facility, including a facility that has been*
20 *scored by the Administrator, or by a State scoring the*
21 *facility pursuant to a contract or cooperative agree-*
22 *ment, under the hazard ranking system referred to in*
23 *section 105(a)(8)(A) of the Comprehensive Environ-*
24 *mental Response, Compensation, and Liability Act of*

1 1980 (42 U.S.C. 9605(a)(8)(A)) and that has received
2 a score of 28.5 or greater.

3 (2) *NPL LISTING.*—No facility addressed by a
4 work plan for a voluntary cleanup approved under a
5 program of a State approved under this section shall
6 be proposed for listing or listed on the National Pri-
7 orities List established under section 105 of such Act
8 (42 U.S.C. 9605) so long as substantial and continual
9 response actions are being undertaken to complete the
10 work plan for the voluntary cleanup in a timely
11 manner, as set forth in the work plan.

12 (3) *COMPLETION OF CLEANUP.*—

13 (A) *IN GENERAL.*—Except as provided in
14 subparagraph (B), the Administrator may not
15 list a facility addressed by a work plan for a vol-
16 untary cleanup approved under a program of a
17 State approved under this section on the Na-
18 tional Priorities List if—

19 (i) a potentially responsible party com-
20 pletes all work required by the work plan
21 for a voluntary cleanup approved under the
22 program of the State at the facility;

23 (ii) the facility has achieved the protec-
24 tive concentration levels and other stand-

ards specified in section 121 of such Act (42 U.S.C. 9621); and

(iii) public participation requirements equivalent to the requirements in sections 113 and 117 of such Act (42 U.S.C. 9613 and 9617) have been complied with for the cleanup action.

(B) *RESCORING*.—If a significant new release or threat of release occurs at the facility, after completion of all work specified in subparagraph (A)(i), the Administrator may—

(i) when performing the scoring, rescore the facility based on conditions at the facility at the time of the scoring; and

(ii) list the facility if warranted by the rescoring.

(4) *NONCOMPLETION OF WORK*.—

(A) *IN GENERAL*.—Subject to subparagraphs (B), (C), and (D), the Administrator may list a facility addressed by a work plan for a voluntary cleanup approved under a program of a State approved under this section on the National Priorities List if—

(i) a potentially responsible party has completed the work required by the work

1 *plan at the facility and public participa-*
2 *tion requirements equivalent to the require-*
3 *ments in sections 113 and 117 of such Act*
4 *(42 U.S.C. 9613 and 9617) have been com-*
5 *plied with for the work; and*

6 *(ii) the facility has not achieved the*
7 *protective concentration levels and other*
8 *standards specified in section 121 of such*
9 *Act (42 U.S.C. 9621).*

10 *(B) SCORING PURSUANT TO AGREE-*
11 *MENTS.—If the Administrator or a State scores*
12 *the facility pursuant to a contract or cooperative*
13 *agreement, the Administrator or the State shall*
14 *take into account conditions at the facility at the*
15 *time of the scoring when performing the scoring.*

16 *(C) CHANGE IN QUALIFICATION FOR LIST-*
17 *ING.—If the facility prior to the work required*
18 *by the work plan would have qualified for listing*
19 *on the National Priorities List, but after the*
20 *completion of the work is no longer qualified for*
21 *listing on the National Priorities List, the Ad-*
22 *ministrator may utilize the Fund (as defined in*
23 *section 101(11) of such Act (42 U.S.C. 9601(11))*
24 *and other authorities of such Act (42 U.S.C.*
25 *9601 et seq.) to ensure achievement of the protec-*

1 *tive concentration levels and other standards*
2 *specified in section 121 of such Act (42 U.S.C.*
3 *9621).*

4 (D) *RELATIONSHIP TO OTHER AUTHOR-*
5 *ITY.—Nothing in this section shall affect the*
6 *ability of the Administrator to use the authority*
7 *provided by section 104, 106, or 107 of such Act*
8 *(42 U.S.C. 9604, 9606, and 9607) with respect*
9 *to a facility.*

10 (e) *EFFECT OF CLEANUP.—The performance of a vol-*
11 *untary cleanup under a State program approved under this*
12 *section shall not constitute an admission of liability under*
13 *any Federal, State, or local law (including a regulation)*
14 *or in any citizens suit or other private action.*

15 (f) *CONSISTENCY WITH NATIONAL CONTINGENCY*
16 *PLAN.—A voluntary cleanup carried out under a State pro-*
17 *gram approved under this section shall be presumed to be*
18 *consistent with the national contingency plan (as defined*
19 *in section 101(31) of the Comprehensive Environmental Re-*
20 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
21 *9601(31))) for the purposes of private cost recovery claims*
22 *under such Act (42 U.S.C. 9601 et seq.).*

23 (g) *EFFECT ON LIABILITY.—*

24 (1) *IN GENERAL.—Except as provided in para-*
25 *graph (2), nothing in this section is intended to affect*

1 *the liability of any person or to affect any other re-*
2 *sponse authority provided under any law or regula-*
3 *tion relating to environmental contamination, includ-*
4 *ing—*

5 *(A) the Toxic Substances Control Act (15*
6 *U.S.C. 2601 et seq.);*

7 *(B) the Federal Water Pollution Control Act*
8 *(33 U.S.C. 1251 et seq.);*

9 *(C) title XIV of the Public Health Service*
10 *Act (commonly known as the “Safe Drinking*
11 *Water Act”) (42 U.S.C. 300f et seq.);*

12 *(D) the Solid Waste Disposal Act (42*
13 *U.S.C. 6901 et seq.); and*

14 *(E) the Comprehensive Environmental Re-*
15 *sponse, Compensation, and Liability Act of 1980*
16 *(42 U.S.C. 9601 et seq.).*

17 *(2) EXCEPTION.—The successful completion of a*
18 *voluntary cleanup at a facility pursuant to a State*
19 *voluntary cleanup program approved under this sec-*
20 *tion shall be considered for the purpose of section*
21 *107(n)(1)(C) of the Comprehensive Environmental*
22 *Response, Compensation, and Liability Act of 1980*
23 *(as added by section 403(a)(2)) as evidence that a*
24 *person that acquires ownership of the facility is a*
25 *bona fide prospective purchaser of the facility within*

1 *the meaning of section 101(39)(D) of such Act (42*
 2 *U.S.C. 9601(39)(D)).*

3 (3) *EFFECT ON STATUS AS BONA FIDE PROSPEC-*
 4 *TIVE PURCHASER.—Nothing in this section is in-*
 5 *tended to require any person to participate in a State*
 6 *voluntary cleanup program approved under this sec-*
 7 *tion or in any other voluntary cleanup program in*
 8 *order to qualify as a bona fide prospective purchaser*
 9 *for the purpose of section 107(n)(1)(C) of such Act (as*
 10 *added by section 403(a)(2)).*

11 (h) *STATUTORY CONSTRUCTION.—Nothing in this title*
 12 *is intended—*

13 (1) *to impose any requirement on a State vol-*
 14 *untary cleanup program existing on or after the date*
 15 *of enactment of this Act if a grant under this section*
 16 *has not been made to the Governor of a State; or*

17 (2) *to preclude a Governor of a State with a vol-*
 18 *untary cleanup program referred to in paragraph (1)*
 19 *from submitting an application for a grant under*
 20 *this section.*

21 **SEC. 305. ECONOMIC REDEVELOPMENT CREDIT ASSIST-**
 22 **ANCE PROGRAM.**

23 (a) *IN GENERAL.—*

24 (1) *ESTABLISHMENT OF PROGRAM.—The Sec-*
 25 *retary, in consultation with the Administrator, shall*

1 *establish a program in accordance with this section*
2 *(referred to in this section as the “program”) to pro-*
3 *vide to an eligible applicant an interest subsidy*
4 *under subsection (b)(1) or a credit enhancement*
5 *under subsection (b)(2), or both.*

6 (2) *PURPOSES.—A loan assisted under this sec-*
7 *tion shall be used only—*

8 (A)(i) *for the cleanup of an affected site at*
9 *which a voluntary cleanup is being conducted, or*
10 *is proposed to be conducted, under a State vol-*
11 *untary cleanup program that meets the require-*
12 *ments of section 304(a)(3); and*

13 (ii) *by an applicant who is a current owner*
14 *or prospective purchaser of the affected site or a*
15 *local applicant; or*

16 (B)(i) *to conduct a site characterization for*
17 *an affected site at which a voluntary cleanup is*
18 *being conducted, or is proposed to be conducted,*
19 *under a State voluntary cleanup program that*
20 *meets the requirements of section 304(a)(3); and*

21 (ii) *by an applicant who is a local appli-*
22 *cant.*

23 (3) *MAXIMUM AMOUNT OF AGGREGATE ASSIST-*
24 *ANCE.—*

1 (A) *SITE CHARACTERIZATIONS.*—*The aggregate*
2 *amount of assistance under this section for*
3 *a site characterization of an affected site may*
4 *not exceed \$100,000.*

5 (B) *CLEANUP ACTIONS.*—*The aggregate*
6 *amount of assistance under this section for a*
7 *cleanup action at an affected site may not exceed*
8 *the lesser of—*

9 (i) *an amount equal to 75 percent of*
10 *the total eligible costs of carrying out the*
11 *cleanup action; and*

12 (ii) *\$900,000.*

13 (4) *DISQUALIFICATION.*—*An applicant who has*
14 *adequate resources to conduct a cleanup at the site,*
15 *without financial assistance provided under the pro-*
16 *gram, shall not be eligible for financial assistance*
17 *with respect to the site under the program.*

18 (b) *FORMS OF ASSISTANCE.*—

19 (1) *INTEREST SUBSIDIES.*—

20 (A) *IN GENERAL.*—*The Secretary may pro-*
21 *vide assistance under the program in the form of*
22 *interest subsidy payments on site characteriza-*
23 *tion loans and cleanup loans that are made by*
24 *participating lenders.*

25 (B) *AMOUNT OF SUBSIDIES.*—

1 (i) *IN GENERAL.*—An interest subsidy
2 under this paragraph shall be in an amount
3 equal to the difference between—

4 (I) the market rate of interest that
5 would otherwise apply to the loan (as
6 determined by the Secretary); and

7 (II) the applicable rate of interest
8 determined under clause (ii).

9 (ii) *APPLICABLE RATES.*—The applica-
10 ble rate of interest referred to in clause
11 (i) (II) is—

12 (I) in the case of a local govern-
13 ment entity, 1 percentage point below
14 the average current yield on market-
15 able obligations of the United States
16 Treasury having comparable matu-
17 rities;

18 (II) in the case of a prospective
19 purchaser of an affected site or a local
20 community development organization,
21 1 percentage point above the average
22 current yield on marketable obligations
23 of the United States Treasury having
24 comparable maturities; or

1 (III) *in the case of a current*
2 *owner of an affected site (other than a*
3 *local applicant), 2 percentage points*
4 *above the average current yield on*
5 *marketable obligations of the United*
6 *States Treasury having comparable*
7 *maturities.*

8 (C) *PASS-THROUGH OF INTEREST SUB-*
9 *SIDY.—Each participating lender that receives*
10 *an interest subsidy payment under this para-*
11 *graph shall pass through to the loan applicant*
12 *the full amount of the subsidy.*

13 (2) *CREDIT ENHANCEMENT.—*

14 (A) *IN GENERAL.—The Secretary may pro-*
15 *vide assistance under the program in the form of*
16 *credit enhancement for site characterization*
17 *loans and cleanup loans that are made by par-*
18 *ticipating lenders. The credit enhancement shall*
19 *consist of a pledge that funds in the Revolving*
20 *Fund will be paid to the lender if all or part of*
21 *a loan assisted under this paragraph is charged*
22 *off.*

23 (B) *MAXIMUM AMOUNT OF CREDIT EN-*
24 *HANCEMENT.—*

1 (i) *IN GENERAL.*—*The total amount of*
2 *credit enhancement provided under this*
3 *paragraph with respect to a loan may not*
4 *exceed the lesser of—*

5 (I) *an amount equal to 50 percent*
6 *of the outstanding balance of the loan;*
7 *and*

8 (II) *an amount equal to 50 per-*
9 *cent of the net loss on the loan as cal-*
10 *culated under clause (ii).*

11 (ii) *CALCULATION OF NET LOSS.*—*The*
12 *net loss referred to in clause (i)(II) shall be*
13 *equal to the difference between—*

14 (I) *the sum of the principal and*
15 *the accrued, unpaid interest on the*
16 *loan that the participating lender*
17 *charges off; and*

18 (II) *the difference between—*

19 (aa) *the gross recovery on the*
20 *loan; and*

21 (bb) *the out-of-pocket costs of*
22 *the recovery.*

23 (C) *SPECIAL LOAN TERMS.*—

24 (i) *INTEREST RATE AND FEES.*—*A*
25 *loan assisted under this paragraph may be*

1 *made with such an interest rate, and with*
2 *such fees, as are agreed on by the partici-*
3 *pating lender and the applicant, consistent*
4 *with applicable law. In determining the in-*
5 *terest rate and fees, the participating lender*
6 *shall take into account the amounts that the*
7 *participating lender is required to deposit*
8 *into the loss reserve fund of the lender under*
9 *subparagraph (D).*

10 (ii) *LINES OF CREDIT.*—*If a loan to be*
11 *assisted under this paragraph is in the form*
12 *of a line of credit, the amount of the loan*
13 *shall be considered to be the maximum*
14 *amount that can be drawn by the applicant*
15 *against the line of credit.*

16 (D) *LOSS RESERVE FUND.*—

17 (i) *IN GENERAL.*—*As a condition of as-*
18 *sistance under this paragraph, each partici-*
19 *pating lender that receives a pledge of funds*
20 *in the Revolving Fund shall establish a loss*
21 *reserve fund with respect to the portfolio of*
22 *loans made by the lender under this para-*
23 *graph. Each loss reserve fund shall be estab-*
24 *lished for the purposes of—*

1 (I) receiving the amounts required
2 to be deposited by the lender under
3 clause (ii) and any interest earned
4 under clause (iii); and

5 (II) disbursing funds, in order to
6 cover losses sustained by the partici-
7 pating lender in connection with loans
8 that are assisted under this paragraph.

9 (ii) DEPOSITS TO FUND. —

10 (I) INITIAL DEPOSIT.—As soon as
11 practicable after receiving a notice of
12 approval by the participating State
13 agency of a request for credit enhance-
14 ment assistance under this paragraph
15 (but not later than 10 business days
16 after the participating lender closes
17 with the applicant a loan assisted
18 under this paragraph), a participating
19 lender shall deposit into the loss reserve
20 fund such amount as is necessary to
21 ensure that the loss reserve fund, to-
22 gether with the total amount of pledges
23 of funds in the Revolving Fund made
24 by the participating State agency to
25 the participating lender under this

1 *paragraph, would be expected to cover*
 2 *the full amount of losses on the port-*
 3 *folio of loans made by the lender under*
 4 *this paragraph, as determined under*
 5 *subclause (II).*

6 (II) *DETERMINATION OF*
 7 *LOSSES.—The amount of losses referred*
 8 *to in subclause (I) shall be determined*
 9 *in accordance with applicable bank*
 10 *regulatory accounting principles, or, if*
 11 *the lender is not a federally regulated*
 12 *lender, generally accepted accounting*
 13 *principles.*

14 (III) *ADJUSTMENT OF AMOUNTS*
 15 *IN FUND.—During the term of each*
 16 *loan assisted under this paragraph and*
 17 *held by a participating lender, and*
 18 *with respect to each loan, the partici-*
 19 *pating lender shall make such addi-*
 20 *tional deposits into the loss reserve*
 21 *fund of the lender as are necessary to*
 22 *ensure compliance with subclauses (I)*
 23 *and (II).*

24 (iii) *INVESTMENT AUTHORITY.—Sub-*
 25 *ject to other applicable law, the participat-*

1 *ing lender may invest funds held in the loss*
2 *reserve fund of the lender in a manner that*
3 *the participating State agency determines is*
4 *safe and liquid.*

5 *(E) CLAIMS.—*

6 *(i) FILING.—*

7 *(I) IN GENERAL.—If a participat-*
8 *ing lender charges off all or part of a*
9 *loan assisted under this paragraph, the*
10 *lender may file a claim for reimburse-*
11 *ment with the participating State*
12 *agency by submitting a form that—*

13 *(aa) includes a statement by*
14 *the participating lender that the*
15 *lender is filing the claim in ac-*
16 *cordance with the terms of the ap-*
17 *plicable participation agreement;*
18 *and*

19 *(bb) contains such other in-*
20 *formation as is required by the*
21 *participating State agency.*

22 *(II) TIMING.—A claim filed under*
23 *subclause (I) shall be filed at the time*
24 *the participating lender charges off all*
25 *or part of the loan. The participating*

1 *lender shall determine when and how*
2 *much to charge off on the loan, in a*
3 *manner that is consistent with—*

4 *(aa) the usual method of the*
5 *lender for making the determina-*
6 *tions on business loans that are*
7 *not loans assisted under this*
8 *paragraph; and*

9 *(bb) the applicable account-*
10 *ing principles referred to in sub-*
11 *paragraph (D)(ii)(II).*

12 *(III) AMOUNT OF CLAIMS.—The*
13 *amount of a claim filed by a partici-*
14 *pating lender may include the amount*
15 *of principal charged off, plus accrued,*
16 *unpaid interest and out-of-pocket loan*
17 *collection expenses.*

18 *(ii) PAYMENT OF CLAIMS.—*

19 *(I) DETERMINATION BY THE PAR-*
20 *TICIPATING STATE AGENCY.—As soon*
21 *as practicable after receipt of a claim*
22 *filed under clause (i), the participating*
23 *State agency shall determine whether*
24 *the claim meets the requirements of*
25 *this paragraph. Subject to subclause*

1 (III), if the claim meets the require-
2 ments, the participating State agency
3 shall—

4 (aa) permit the participating
5 lender to withdraw funds from the
6 loss reserve fund of the lender es-
7 tablished under subparagraph (D)
8 in an amount not to exceed the
9 portion of the loss that is required
10 to be paid by the lender under the
11 participation agreement; and

12 (bb) if the amount referred to
13 in item (aa) is not sufficient to
14 pay the full amount of the claim,
15 submit the balance of the claim to
16 the Secretary for payment in ac-
17 cordance with subclause (II).

18 (II) PAYMENT BY THE SEC-
19 RETARY.—Subject to subparagraph (B)
20 and subsection (a)(3), the Secretary
21 shall request the Secretary of the
22 Treasury to pay, and the Secretary of
23 the Treasury shall pay, to the partici-
24 pating State agency for payment to the
25 participating lender from the Revolv-

1 *ing Fund an amount equal to the dif-*
2 *ference between—*

3 *(aa) the full amount of the*
4 *claim referred to in subclause*
5 *(I)(bb); and*

6 *(bb) the amount withdrawn*
7 *from the loss reserve fund of the*
8 *lender under subclause (I)(aa).*

9 *(III) DENIAL OF CLAIMS.—A par-*
10 *ticipating State agency or the Sec-*
11 *retary may deny a claim if—*

12 *(aa) a statement or warranty*
13 *made by the participating lender*
14 *under the participation agreement*
15 *to the participating State agency*
16 *at the time that the request for as-*
17 *sistance under this paragraph was*
18 *made for the loan, or at the time*
19 *that the claim was submitted, was*
20 *known by the participating lender*
21 *to be false; or*

22 *(bb) the claim otherwise does*
23 *not comply with the participation*
24 *agreement.*

1 (IV) *RESUBMISSION OF CLAIMS*
2 *AFTER DENIAL.*—If a claim is denied
3 under subclause (III)(bb), the partici-
4 pating lender may resubmit the claim
5 with additional information that ad-
6 dresses the reasons for the denial of the
7 claim. A determination on the resub-
8 mitted claim shall be made in accord-
9 ance with this clause.

10 (iii) *SUBSEQUENT RECOVERY OF CLAIM*
11 *AMOUNT.*—

12 (I) *REPAYMENT TO LOSS RESERVE*
13 *FUND.*—If, subsequent to payment of a
14 claim by the participating State agen-
15 cy, the participating lender recovers
16 from an applicant any amount for
17 which payment of the claim was made
18 under clause (ii), the participating
19 lender shall promptly pay to the loss
20 reserve fund of the lender established
21 under subparagraph (D) an amount
22 equal to the product of—

23 (aa) the applicable amount
24 calculated under subclause (III);
25 and

1 (bb) the percentage of the
 2 claim that was withdrawn from
 3 the loss reserve fund of the lender
 4 under clause (ii)(I)(aa).

5 (II) REPAYMENT TO PARTICIPAT-
 6 ING STATE AGENCY.—If the participat-
 7 ing lender makes a payment under
 8 subclause (I), the lender shall promptly
 9 pay to the participating State agency,
 10 for transfer to the Secretary of the
 11 Treasury for deposit into the general
 12 fund of the Treasury, an amount equal
 13 to the difference between—

14 (aa) the applicable amount
 15 calculated under subclause (III);
 16 and

17 (bb) the amount paid by the
 18 lender to the loss reserve fund of
 19 the lender under subclause (I).

20 (III) APPLICABLE AMOUNT.—The
 21 applicable amount referred to in
 22 subclauses (I) and (II) shall be equal to
 23 the difference between—

1 (aa) the amount recovered
 2 from the applicant referred to in
 3 subclause (I); and

4 (bb) any out-of-pocket ex-
 5 penses incurred by the participat-
 6 ing lender in the collection of the
 7 amount referred to in item (aa).

8 (F) RETENTION OF PLEDGE AMOUNTS.—

9 (i) IN GENERAL.—Subject to subpara-
 10 graph (B) and subsection (a)(3), if a par-
 11 ticipating lender makes, in each fiscal year
 12 of the Federal Government, at least 1 new
 13 loan assisted under this paragraph, the
 14 lender may retain all pledges of amounts in
 15 the Revolving Fund previously obtained by
 16 the lender under this paragraph.

17 (ii) RECAPTURE.—

18 (I) IN GENERAL.—If a participat-
 19 ing lender does not meet the condition
 20 described in clause (i), the participat-
 21 ing State agency shall annually notify
 22 the Secretary of the amount by which
 23 the total pledge of amounts in the Re-
 24 volving Fund attributable to the lender
 25 should be reduced because of the reduc-

1 *tion in the balances of the loans made*
2 *by the lender assisted under this para-*
3 *graph during the previous year. The*
4 *Secretary shall make the reduction.*

5 (II) *USE OF AMOUNTS MADE*
6 *AVAILABLE.—The Secretary may*
7 *pledge amounts in the Revolving Fund*
8 *made available under subclause (I) as*
9 *credit enhancement assistance under*
10 *this paragraph to any eligible partici-*
11 *pating lender.*

12 (c) *DISTRIBUTION OF ASSISTANCE.—*

13 (1) *ANNOUNCEMENT BY SECRETARY.—Not later*
14 *than September 30, 1994, and each September 30*
15 *thereafter, the Secretary shall publish in the Federal*
16 *Register, and in a newspaper of general circulation*
17 *(such as the Commerce Business Daily), the amount*
18 *of funds available for assistance under the program*
19 *for the following fiscal year.*

20 (2) *ANNOUNCEMENT BY PARTICIPATING LEND-*
21 *ERS.—Not later than 30 days after the date of publi-*
22 *cation under paragraph (1), each participating lend-*
23 *er shall publicly announce, in the manner specified*
24 *by the participating State agency, the offer of the*

1 *lender to make loans under the program to eligible*
2 *applicants.*

3 (3) *REQUEST TO STATE AGENCIES.—*

4 (A) *IN GENERAL.—*After the termination of
5 *a period (specified by the Secretary by regula-*
6 *tion) that is sufficient to permit eligible appli-*
7 *cants to apply for assistance under the program,*
8 *the participating lender shall notify the partici-*
9 *pating State agency of the amount of assistance*
10 *under the program that the lender determines is*
11 *necessary in order to assist eligible applicants*
12 *that have filed applications for loans assisted*
13 *under the program with the lender.*

14 (B) *CERTIFICATION.—*With respect to each
15 *loan for which the lender requests assistance*
16 *under the program, the participating lender*
17 *shall certify to the participating State agency*
18 *under the participation agreement that—*

19 (i) *the lender would not make the loan*
20 *without the requested assistance because the*
21 *risk of underwriting the loan would not be*
22 *acceptable to the lender; and*

23 (ii) *each loan meets the requirements of*
24 *this section.*

1 (4) *REQUEST OF FUNDS BY STATE AGENCIES.*—

2 *Based on the submissions to the participating State*
 3 *agency under paragraph (3), the participating State*
 4 *agency may request assistance from the Secretary*
 5 *under the program. The Secretary and the participat-*
 6 *ing State agency shall allocate assistance in accord-*
 7 *ance with subsection (f).*

8 (d) *SELECTION OF PARTICIPATING STATE AGEN-*
 9 *CIES.*—

10 (1) *IN GENERAL.*—

11 (A) *SELECTION BY THE GOVERNOR.*—*Sub-*
 12 *ject to subparagraph (B), the Governor of a State*
 13 *that has a voluntary cleanup program that meets*
 14 *the requirements of section 304(a)(3) may select*
 15 *a State agency to be the participating State*
 16 *agency under the program. The participating*
 17 *State agency shall distribute assistance provided*
 18 *by the Secretary under the program.*

19 (B) *DISAPPROVAL BY THE SECRETARY.*—
 20 *The Secretary may disapprove the selection of*
 21 *the Governor under subparagraph (A) if the Sec-*
 22 *retary determines that the agency is not capable*
 23 *of carrying out, or is in fact not carrying out,*
 24 *the duties of the agency under the program. If*
 25 *the selection is disapproved, whether before or*

during participation by the agency in the program, the Governor may select another State agency to be the participating State agency. The Secretary may disapprove the new selection in accordance with this subparagraph.

(C) ASSUMPTION OF DUTIES BY THE SECRETARY.—

(i) IN GENERAL.—If, after disapproval of a selection of the Governor of a State under subparagraph (B), the Governor fails to select a participating State agency that is not disapproved by the Secretary, the Secretary shall assume the duties of the participating State agency of the State under the program until the earlier of—

(I) the selection by the Governor of a participating State agency that is not disapproved by the Secretary; and

(II) the repayment of all loans for which assistance is provided under the program in the State.

(ii) TERMINATION OF ASSISTANCE.—

(I) IN GENERAL.—Subject to subclause (II), the Secretary may not provide assistance under this title to or

1 *through a State for any fiscal year of*
2 *the Federal Government that is subse-*
3 *quent to a fiscal year during which the*
4 *Governor of the State fails to select a*
5 *participating State agency that is not*
6 *disapproved by the Secretary.*

7 (II) *WAIVER OF TERMINATION.—*
8 *If the Governor selects a participating*
9 *State agency that is not disapproved*
10 *by the Secretary prior to the end of a*
11 *fiscal year, the Secretary may waive*
12 *the termination of assistance under*
13 *subclause (I) for the fiscal year and*
14 *subsequent fiscal years.*

15 (2) *CONSULTATION WITH ENVIRONMENTAL AGEN-*
16 *cy.—If the participating State agency selected under*
17 *this subsection is not the primary agency of the State*
18 *concerned with environmental regulation, the partici-*
19 *pating State agency shall carry out the duties of the*
20 *agency under the program in consultation with the*
21 *appropriate State environmental agency.*

22 (3) *TERMINATION BY THE PARTICIPATING STATE*
23 *AGENCY.—*

24 (A) *IN GENERAL.—With the approval of the*
25 *Governor of the State, the participating State*

1 agency may terminate the participation of the
2 State agency in the program. A termination
3 shall be prospective only, and may not apply to
4 loans assisted under the program prior to the
5 termination.

6 (B) RESELECTION BY THE GOVERNOR.—If
7 the participating State agency terminates par-
8 ticipation in the program, the Governor of the
9 State may select another State agency in accord-
10 ance with paragraph (1).

11 (e) PARTICIPATION AGREEMENTS.—

12 (1) IN GENERAL.—A participating State agency
13 may enter into a participation agreement under this
14 subsection with a lender that is determined by the
15 participating State agency to have sufficient commer-
16 cial lending experience and financial and managerial
17 capacity to participate in and comply with the re-
18 quirements of the program.

19 (2) PARTICIPATING LENDERS.—Upon entering
20 into the participation agreement with the participat-
21 ing State agency, the lender shall become a partici-
22 pating lender eligible to receive assistance for loans
23 under the program.

24 (3) TERMS OF AGREEMENT.—The participation
25 agreement between a participating State agency and

1 *a participating lender shall incorporate appropriate*
2 *provisions of this section and may not include any*
3 *provision inconsistent with this section.*

4 (4) *ASSISTED LOAN TERMS.—*

5 (A) *LOANS.—A participating lender may*
6 *make a loan with assistance under the program*
7 *to an eligible applicant described in subsection*
8 *(a) that submits an application to the partici-*
9 *pating lender that is approved by the lender.*

10 (B) *LOAN APPLICATION.—An application*
11 *for a loan under the program shall be in such*
12 *form as the participating State agency, in con-*
13 *sultation with the Secretary, determines is ap-*
14 *propriate, and shall include—*

15 (i) *a description of the affected site, in-*
16 *cluding the nature and extent of any known*
17 *or suspected environmental contamination*
18 *at the affected site and the legal description*
19 *of the real property associated with the af-*
20 *ected site;*

21 (ii) *a complete description of the fi-*
22 *nancial standing of the applicant that in-*
23 *cludes a description of the assets, cash flow,*
24 *and liabilities of the applicant;*

1 (iii) a written certification that the
2 applicant has attempted in good faith, and
3 has been unable, to secure financing not
4 subject to assistance under the program
5 from a private or public lending institution
6 for the cleanup action that is the subject of
7 the loan application, and specifying—

8 (I) the name of each lending insti-
9 tution to which the applicant submit-
10 ted an application for a loan; and

11 (II) with respect to each applica-
12 tion to a lending institution referred to
13 in subclause (I)—

14 (aa) the date that the loan
15 application was submitted and
16 the date that the applicant was
17 notified of the refusal;

18 (bb) the amount of the loan
19 requested;

20 (cc) the term of the loan re-
21 quested;

22 (dd) proof of the refusal of
23 the loan by the lending institu-
24 tion; and

1 (ee) the reasons given, if any,
2 by the lending institution for the
3 refusal of the loan;

4 (iv) the proposed method, and antici-
5 pated period of time required, to clean up
6 the environmental contamination at the af-
7 fected site;

8 (v) an estimate of the proposed total
9 cost of the site characterization or cleanup
10 to be conducted at the site; and

11 (vi) an analysis that demonstrates the
12 potential of the affected site for stimulating
13 economic development on completion of the
14 cleanup of the site.

15 (C) LOAN APPROVAL.—In determining
16 whether to make a loan under the program, the
17 participating lender shall—

18 (i) consider the need of the applicant
19 for financial assistance, taking into consid-
20 eration the financial resources available to
21 the applicant;

22 (ii) consider the ability of the appli-
23 cant to repay the loan in a timely manner;
24 and

1 (iii) require that the affected site have
2 demonstrable potential for stimulating new
3 and continuing economic development on
4 completion of the cleanup, in light of—

5 (I) the estimated fair market
6 value of the affected site after cleanup;

7 (II) other economically viable,
8 commercial activity on real property—

9 (aa) located in the imme-
10 diate vicinity of the affected site
11 on the date of the consideration of
12 the application; or

13 (bb) projected to be located in
14 the immediate vicinity of the af-
15 fected site by the date that is 5
16 years after the date of the consid-
17 eration of the application;

18 (III) the potential of the affected
19 site for creating new, or expanding
20 then existing, business and employment
21 opportunities on completion of the
22 cleanup of the site;

23 (IV) the estimated additional tax
24 revenues expected to be generated at the
25 site by the economic redevelopment;

1 (V) *whether the site is located in*
2 *an economically distressed community,*
3 *including an enterprise zone (as de-*
4 *finied by applicable law);*

5 (VI) *whether the cleanup and the*
6 *proposed redevelopment is consistent*
7 *with any applicable State or local*
8 *community economic development*
9 *plan; and*

10 (VII) *such other factors as the*
11 *participating State agency, in con-*
12 *sultation with the Secretary, considers*
13 *relevant to carry out the purposes of*
14 *the program.*

15 (D) *STATE AGENCY APPROVAL.—Each ap-*
16 *plication for a loan assisted under the program*
17 *shall include a written statement by the State*
18 *agency under whose voluntary program the vol-*
19 *untary cleanup is being conducted, or is pro-*
20 *posed to be conducted, that the estimated total*
21 *cost of the voluntary cleanup is reasonable.*

22 (E) *LOAN AGREEMENTS.—*

23 (i) *IN GENERAL.—Each loan made by*
24 *a participating lender under the program*

1 *shall be made pursuant to a loan agree-*
2 *ment.*

3 (ii) *MATURITY PERIOD.*—*The maturity*
4 *period of the loan (as determined by the*
5 *participating lender) may not exceed 10*
6 *years.*

7 (iii) *COMPLIANCE WITH CLEANUP*
8 *LAWS AND PROGRAMS.*—*The applicant shall*
9 *comply with Federal and State laws (in-*
10 *cluding regulations) applicable to the clean-*
11 *up and shall proceed in accordance with*
12 *any voluntary cleanup program in effect in*
13 *the State.*

14 (iv) *USE OF LOAN.*—*The applicant*
15 *shall—*

16 (I) *use the loan solely for the pur-*
17 *pose of conducting a site characteriza-*
18 *tion, or cleaning up the environmental*
19 *contamination, at the affected site; and*

20 (II) *use any excess funds to repay*
21 *to the participating lender the loan as-*
22 *sisted under this section as soon as*
23 *practicable after a determination by*
24 *an appropriate official of the appro-*
25 *priate State environmental agency that*

1 *the site characterization or cleanup has*
2 *been completed.*

3 (v) *PROHIBITION OF TRANSFER.—A*
4 *loan under the program may be transferred*
5 *by a participating lender to another par-*
6 *ticipating lender only if the participating*
7 *State agency agrees to the transfer in writ-*
8 *ing. An applicant may not transfer the*
9 *right to receive a loan assisted under the*
10 *program.*

11 (vi) *ACCELERATION OF LOAN UPON*
12 *FAILURE TO INITIATE.—*

13 (I) *DECLARATION OF DEFAULT.—*
14 *The participating State agency shall*
15 *declare a loan assisted under the pro-*
16 *gram in default if, with respect to the*
17 *affected site that is the subject of the*
18 *loan—*

19 (aa) *a site characterization*
20 *or cleanup action has not been*
21 *initiated by the date that is 1*
22 *year after the date on which the*
23 *loan was made; or*

24 (bb) *the site characterization*
25 *or cleanup has not been completed*

1 *in a timely manner (as deter-*
2 *mined by the participating State*
3 *agency).*

4 (II) *ACCELERATION.*—*Subject to*
5 *subclause (III), if the participating*
6 *State agency declares a loan in default*
7 *under subclause (I), the applicant shall*
8 *pay to the participating lender, as*
9 *soon as practicable after notice to the*
10 *applicant by the participating State*
11 *agency, the sum of—*

12 *(aa) the amount of the loan;*
13 *and*

14 *(bb) the amount of interest*
15 *accrued and unpaid on the*
16 *amount referred to in item (aa)*
17 *from the date the loan was made.*

18 (III) *WAIVER.*—*The participating*
19 *State agency may waive the require-*
20 *ment for acceleration under subclause*
21 *(II) if the participating State agency*
22 *determines that—*

23 *(aa) the applicant acted in a*
24 *manner consistent with the re-*
25 *quirements of this section; and*

1 (bb) *exigent circumstances*
2 *contributed to the delay.*

3 (vii) *OTHER TERMS AND CONDI-*
4 *TIONS.—The loan agreement shall include*
5 *such other terms and conditions as the par-*
6 *ticipating State agency, in consultation*
7 *with the Secretary and the Administrator,*
8 *determines are necessary to protect the fi-*
9 *nancial interests of the United States and*
10 *meet the requirements of this title.*

11 (5) *OVERSIGHT BY STATE AGENCIES.—*

12 (A) *IN GENERAL.—The participating State*
13 *agency shall have access to such records of each*
14 *participating lender as the agency determines*
15 *are necessary to ensure compliance with the*
16 *agreement and to review certifications made*
17 *under subsection (c)(3)(B).*

18 (B) *REVOCATION OF ASSISTANCE.—*

19 (i) *IN GENERAL.—If the participating*
20 *State agency determines that a participat-*
21 *ing lender has knowingly and falsely made*
22 *a certification under subsection (c)(3)(B),*
23 *the participating State agency may revoke*
24 *and recover assistance provided to or*
25 *through the lender under the program.*

1 (ii) *PAYMENT TO THE SECRETARY OF*
2 *THE TREASURY.*—*The participating State*
3 *agency shall pay any recovery under clause*
4 *(i) to the Secretary of the Treasury for de-*
5 *posit into the general fund of the Treasury.*

6 (f) *ALLOCATION OF ASSISTANCE.*—

7 (1) *BY THE SECRETARY.*—*Subject to subsection*
8 *(d)(1)(C), the Secretary shall allocate assistance*
9 *under the program among States that have voluntary*
10 *cleanup programs that meet the requirements of sec-*
11 *tion 304(a)(3) on an equitable basis, taking into ac-*
12 *count—*

13 (A) *the amount of assistance requested by*
14 *each participating State agency under subsection*
15 *(c)(4);*

16 (B) *the purpose of this title and the in-*
17 *tended beneficiaries of the programs established*
18 *under this title; and*

19 (C) *the needs for assistance throughout the*
20 *United States.*

21 (2) *BY THE STATE AGENCIES.*—

22 (A) *IN GENERAL.*—*Each participating*
23 *State agency shall allocate assistance under the*
24 *program among participating lenders that re-*

1 *quest the assistance on an equitable basis, taking*
2 *into account—*

3 *(i) the purpose of this title and the in-*
4 *tended beneficiaries of the programs estab-*
5 *lished under this title; and*

6 *(ii) the needs for assistance throughout*
7 *the State.*

8 *(B) REPORT.—Not less often than annually,*
9 *each participating State agency shall report to*
10 *the Secretary on the allocation of assistance*
11 *under the program within the State.*

12 *(g) ENFORCEMENT.—*

13 *(1) IN GENERAL.—If a person fails to comply*
14 *with any condition of a participation agreement or*
15 *a loan agreement entered into under this section, the*
16 *Secretary may request the Attorney General of the*
17 *United States to commence a civil action in an ap-*
18 *propriate district court of the United States to enforce*
19 *the participation agreement or loan agreement.*

20 *(2) JURISDICTION OF DISTRICT COURT.—The*
21 *district court shall have jurisdiction to enforce the*
22 *participation agreement or loan agreement and grant*
23 *such relief as the public interest and the equities of*
24 *the case may require.*

1 **SEC. 306. REGULATIONS.**

2 (a) *BY THE ADMINISTRATOR.*—Subject to subsection
3 (c), the Administrator shall issue such regulations as are
4 necessary to carry out section 304.

5 (b) *BY THE SECRETARY.*—Subject to subsection (c), the
6 Secretary shall issue such regulations as are necessary to
7 carry out section 305.

8 (c) *CONTENTS OF REGULATIONS.*—The regulations
9 shall include such procedures and standards as the Sec-
10 retary or the Administrator, as appropriate, considers nec-
11 essary, including procedures and standards for evaluating
12 an application for a grant or credit assistance submitted
13 under this title.

14 **SEC. 307. ECONOMIC REDEVELOPMENT REVOLVING FUND.**

15 (a) *IN GENERAL.*—There is established in the Treasury
16 of the United States a trust fund to be known as the “Eco-
17 nomic Redevelopment Revolving Fund”, consisting of such
18 amounts as are appropriated to the Revolving Fund, or
19 transferred or credited to the Revolving Fund pursuant to
20 this section.

21 (b) *TRANSFERS TO THE REVOLVING FUND.*—There are
22 transferred to the Revolving Fund amounts equivalent to
23 the amounts received in the Treasury pursuant to sub-
24 sections (b)(2)(E)(iii) and (e)(5)(B)(ii) of section 305.

25 (c) *MANAGEMENT OF THE REVOLVING FUND.*—

26 (1) *INVESTMENT.*—

1 (A) *IN GENERAL.*—*The Secretary of the*
2 *Treasury shall invest such portion of the Revolv-*
3 *ing Fund as is not, in the judgment of the Sec-*
4 *retary of the Treasury, required to meet current*
5 *withdrawals. The investments may be made only*
6 *in interest-bearing obligations of the United*
7 *States. For the purpose of investments, obliga-*
8 *tions may be acquired—*

9 *(i) on original issue at the issue price;*

10 *or*

11 *(ii) by purchase of outstanding obliga-*
12 *tions at the market price.*

13 (B) *SALE OF OBLIGATIONS.*—*Any obliga-*
14 *tion acquired by the Revolving Fund may be*
15 *sold by the Secretary of the Treasury at the mar-*
16 *ket price.*

17 (C) *INTEREST ON CERTAIN PROCEEDS.*—
18 *The interest on, and the proceeds from the sale*
19 *or redemption of, any obligations held in the Re-*
20 *volving Fund shall be credited to and form a*
21 *part of the Revolving Fund.*

22 (2) *MONTHLY TRANSFERS.*—*The amounts trans-*
23 *ferred by subsection (b) or required to be credited*
24 *under paragraph (1)(C) shall be transferred at least*
25 *monthly from the general fund of the Treasury to the*

1 *Revolving Fund on the basis of estimates made by the*
 2 *Secretary of the Treasury. Proper adjustment shall be*
 3 *made in amounts subsequently transferred to the ex-*
 4 *tent prior estimates were in excess of, or less than, the*
 5 *amounts required to be transferred.*

6 (3) *REPORT.—It shall be the duty of the Sec-*
 7 *retary of the Treasury to hold the Revolving Fund*
 8 *and (after consultation with the Secretary) to report*
 9 *to Congress each year concerning—*

10 (A) *the financial condition and the results*
 11 *of the operations of the Revolving Fund during*
 12 *the preceding fiscal year; and*

13 (B) *the expected condition and operations of*
 14 *the Revolving Fund for the 5 fiscal years follow-*
 15 *ing the preceding fiscal year.*

16 (d) *EXPENDITURES FROM THE REVOLVING FUND.—*
 17 *Amounts in the Revolving Fund shall be available, as pro-*
 18 *vided by appropriation Acts, only to carry out the loan as-*
 19 *sistance program established under section 305.*

20 (e) *AUTHORITY TO BORROW.—*

21 (1) *IN GENERAL.—There are authorized to be ap-*
 22 *propriated to the Revolving Fund, as a repayable ad-*
 23 *vance, an amount equal to \$30,000,000 for each of fis-*
 24 *cal years 1995 through 1998.*

25 (2) *REPAYMENT OF ADVANCES.—*

1 (A) *IN GENERAL.*—If the Secretary of the
 2 Treasury determines that there are sufficient
 3 funds available in the Revolving Fund to repay
 4 a repayable advance, the Secretary of the Treas-
 5 ury shall transfer from the Revolving Fund to
 6 the general fund of the Treasury an amount
 7 equal to the amount of a repayment plus interest
 8 (as determined by the Secretary of the Treasury
 9 under subparagraph (B)).

10 (B) *RATE OF INTEREST.*—The amount of
 11 interest on an advance made under this sub-
 12 section shall be at a rate determined by the Sec-
 13 retary of the Treasury (as of the close of the cal-
 14 endar month preceding the month in which the
 15 advance is made).

16 **SEC. 308. AUTHORIZATIONS OF APPROPRIATIONS.**

17 (a) *VOLUNTARY CLEANUP PROGRAM.*—There are au-
 18 thorized to be appropriated to the Environmental Protec-
 19 tion Agency, to carry out sections 304 and 305, an amount
 20 not to exceed \$15,000,000 for fiscal year 1995, and
 21 \$7,500,000 for each of fiscal years 1996 through 1998.

22 (b) *SITE CHARACTERIZATION AND CLEANUP PRO-*
 23 *GRAMS.*—

24 (1) *IN GENERAL.*—There are authorized to be ap-
 25 propriated to the Department of Housing and Urban

1 *Development from the Revolving Fund, to provide site*
2 *characterization credit assistance and cleanup credit*
3 *assistance under section 305, an amount not to exceed*
4 *\$30,000,000 for each of fiscal years 1995 through*
5 *1998.*

6 (2) *ALLOCATION.*—*At the beginning of each fis-*
7 *cal year, the Secretary shall allocate—*

8 (A) *50 percent of the amounts appropriated*
9 *under paragraph (1) for site characterization;*
10 *and*

11 (B) *50 percent of the amounts appropriated*
12 *under paragraph (1) for cleanup.*

13 (c) *AVAILABILITY OF FUNDS.*—*The amounts appro-*
14 *priated pursuant to this section shall remain available*
15 *until expended.*

16 **SEC. 309. REPORTS.**

17 (a) *IN GENERAL.*—*Not later than 1 year after the date*
18 *of enactment of this Act, and not later than January 31*
19 *of each of the 3 calendar years thereafter, the Secretary and*
20 *the Administrator shall prepare and submit a report de-*
21 *scribing the achievements of each grant or loan program*
22 *established under this title to—*

23 (1) *the Committee on Environment and Public*
24 *Works, and the Committee on Banking, Housing, and*
25 *Urban Affairs, of the Senate; and*

1 (2) *the Committee on Energy and Commerce,*
2 *and the Committee on Banking, Finance and Urban*
3 *Affairs, of the House of Representatives.*

4 (b) *CONTENTS OF REPORT.*—*Each report shall, with*
5 *respect to the programs established under this title, include*
6 *a description of—*

7 (1) *the number of grant and credit assistance*
8 *applications received by the Secretary during the pre-*
9 *ceding calendar year;*

10 (2) *the number of grant and credit assistance*
11 *applications approved by the Secretary during the*
12 *preceding calendar year;*

13 (3) *with respect to each voluntary cleanup pro-*
14 *gram of a State that was the subject of a grant under*
15 *section 304—*

16 (A) *the purposes to which the grant made to*
17 *the State was applied; and*

18 (B) *the achievements of the program;*

19 (4)(A) *the affected sites identified by local appli-*
20 *cants; and*

21 (B) *the status of the sites referred to in subpara-*
22 *graph (A) regarding subsequent cleanup and eco-*
23 *nomie redevelopment;*

24 (5)(A) *the affected sites at which a site charac-*
25 *terization or cleanup was initiated pursuant to the*

1 *economic redevelopment credit assistance program*
2 *under section 305; and*

3 *(B) the status of the sites referred to in subpara-*
4 *graph (A) regarding ongoing or completed site char-*
5 *acterizations, cleanup actions, and economic redevel-*
6 *opment activities;*

7 *(6) the grant and credit assistance applications*
8 *disapproved during the preceding year, and the rea-*
9 *sons for disapproval;*

10 *(7) the amount of grants and credit assistance*
11 *made during the preceding year, and an estimate of*
12 *the total costs incurred by parties receiving a loan as-*
13 *sisted under the economic redevelopment credit assist-*
14 *ance program under section 305;*

15 *(8) the number of applicants for grants and*
16 *credit assistance that may be in need of financial as-*
17 *istance in establishing voluntary cleanup programs,*
18 *performing site characterizations, and conducting*
19 *cleanups to achieve economic redevelopment under*
20 *this title; and*

21 *(9) the allocation of assistance under sections*
22 *304 and 305 among the States and among different*
23 *types of applicants for assistance under this title.*

1 **SEC. 310. FUNDING.**

2 (a) *ADMINISTRATIVE COST LIMITATION.*—Not more
3 than 15 percent of the amount of a grant made or loan
4 assisted pursuant to this title may be used for administra-
5 tive costs. No grant or credit assistance made pursuant to
6 this title may be used to pay for fines or penalties owed
7 to a State or the Federal Government.

8 (b) *OTHER LIMITATIONS.*—Funds made available to a
9 State pursuant to the grant program established under sec-
10 tion 304 shall be used only for establishing or administering
11 a voluntary cleanup program. Funds otherwise made avail-
12 able under this title may not be used to relieve a State of
13 the commitment or responsibilities of the State under State
14 law to assist or carry out cleanup actions at affected sites.

15 **SEC. 311. STATUTORY CONSTRUCTION.**

16 Nothing in this title is intended to affect the liability
17 or response authorities for environmental contamination of
18 any other law (including any regulation), including—

19 (1) the Comprehensive Environmental Response,
20 Compensation, and Liability Act of 1980 (42 U.S.C.
21 9601 et seq.);

22 (2) the Solid Waste Disposal Act (42 U.S.C.
23 6901 et seq.);

24 (3) the Federal Water Pollution Control Act (33
25 U.S.C. 1251 et seq.);

1 (4) *the Toxic Substances Control Act (15 U.S.C.*
2 *2601 et seq.)*; and

3 (5) *title XIV of the Public Health Service Act*
4 *(commonly known as the “Safe Drinking Water Act”)*
5 *(42 U.S.C. 300f et seq.)*.

6 ***TITLE IV—LIABILITY AND***
7 ***ALLOCATION***

8 ***SEC. 401. INFORMATION GATHERING AND ACCESS.***

9 (a) *ADDITIONAL INFORMATION.*—Section 104(e)(2) (42
10 *U.S.C. 9604(e)(2)) is amended—*

11 (1) *by striking “cleanup” in subparagraph (C)*
12 *and inserting “response action”*; and

13 (2) *by inserting after subparagraph (C) the fol-*
14 *lowing:*

15 “(D) *The identity of any persons engaged*
16 *in, responsible for, controlling, or having the*
17 *ability to control activities or operations at a*
18 *vessel or facility giving rise to liability under*
19 *this Act.*

20 “(E) *Information relating to the potential*
21 *liability or responsibility of any person to per-*
22 *form or pay for a response action.*

23 “(F) *For a person conducting a response*
24 *action, an accounting of direct and indirect costs*

1 *the person has incurred in conducting such re-*
2 *sponse action.”.*

3 **(b) CERTIFICATIONS.**—*Section 104(e) (42 U.S.C.*
4 *9604(e)) is amended—*

5 *(1) by redesignating paragraphs (3), (4), (5),*
6 *(6), and (7) as paragraphs (4), (5), (6), (7), and (8),*
7 *respectively; and*

8 *(2) by inserting after paragraph (2) the follow-*
9 *ing:*

10 *“(3) CERTIFICATION.—For a request made pur-*
11 *suant to this subsection, the President may require a*
12 *respondent to certify that—*

13 *“(A) the response is true, accurate, and*
14 *complete to the best of the respondent’s knowl-*
15 *edge;*

16 *“(B) the response is based on a diligent*
17 *good faith search of records in the possession or*
18 *control of the person to whom the request was di-*
19 *rected;*

20 *“(C) the response is based on a reasonable*
21 *inquiry of the current and former officers, direc-*
22 *tors, employees, and agents of the person to*
23 *whom the request was directed;*

1 “(D) the response accurately and completely
2 reflects information obtained in the course of
3 conducting such search and inquiry;

4 “(E) the respondent understands that there
5 is a continuing obligation to supplement the re-
6 sponse if any additional, new, or different infor-
7 mation relevant to the matters addressed in the
8 request or the response thereto becomes known or
9 available to the respondent; and

10 “(F) the respondent understands that there
11 are significant penalties for submitting false in-
12 formation, including the possibility of fine and
13 imprisonment.”.

14 (c) *ADMINISTRATIVE SUBPOENAS.*—Section 104(e) (42
15 U.S.C. 9604(e)) is further amended by inserting after para-
16 graph (8) (as redesignated by subsection (b)) the following
17 new paragraph:

18 “(9) *ADMINISTRATIVE SUBPOENAS.*—When it
19 would assist in the collection of information author-
20 ized under paragraph (1), the President may by sub-
21 poena require the attendance and testimony of wit-
22 nesses and the production of reports, papers, docu-
23 ments, answers to questions, and other information
24 listed in paragraph (2) that the President considers
25 necessary. Such witnesses shall be paid the same fees

1 *and mileage that are paid to witnesses in the courts*
 2 *of the United States under chapter 119 of title 28,*
 3 *United States Code. In the event of contumacy or fail-*
 4 *ure or refusal of any person to obey any such sub-*
 5 *poena, any district court of the United States in*
 6 *which venue is proper shall have jurisdiction to order*
 7 *any such person to comply with such subpoena. Any*
 8 *failure to obey such an order of the court is punish-*
 9 *able by the court as a contempt thereof.”.*

10 (d) *CONFIDENTIALITY OF INFORMATION.—Paragraph*
 11 *(8) of section 104(e) (as redesignated by subsection (b)) is*
 12 *amended by striking subparagraph (A) and inserting the*
 13 *following:*

14 “(A) *AVAILABILITY OF INFORMATION TO*
 15 *PUBLIC.—Any records, reports, documents, or in-*
 16 *formation obtained from any person under this*
 17 *section (including records, reports, documents, or*
 18 *information obtained by representatives of the*
 19 *President and records, reports, documents, or in-*
 20 *formation obtained pursuant to a contract,*
 21 *grant, or other agreement to perform work pur-*
 22 *suant to this section) shall be made available to*
 23 *the public, except as follows:*

24 “(i) *INFORMATION NOT DISCLOSED BY*
 25 *FEDERAL OFFICERS OR EMPLOYEES.—Upon*

1 *a showing satisfactory to the President (or*
2 *the State, as the case may be) by any per-*
3 *son that such a record, report, document, or*
4 *information, or any particular part thereof*
5 *(other than health or safety effects data and*
6 *data regarding the release involved), to*
7 *which the President (or the State, as the*
8 *case may be) or any officer, employee, or*
9 *representative has access under this section,*
10 *if made public, would divulge information*
11 *entitled to protection under section 1905 of*
12 *title 18, United States Code, such informa-*
13 *tion or particular portion thereof shall be*
14 *considered confidential in accordance with*
15 *the purposes of that section. Notwithstand-*
16 *ing the preceding sentence, such record, re-*
17 *port, document, or information may be dis-*
18 *closed to other officers, employees, or author-*
19 *ized representatives of the United States*
20 *concerned with carrying out this Act, or*
21 *when relevant in any proceeding under this*
22 *Act, or, if such records, reports, documents,*
23 *or information are obtained or submitted to*
24 *the United States (or the State, as the case*
25 *may be) pursuant to a contract, grant, or*

1 *other agreement to perform work pursuant*
 2 *to this section, to persons from whom the*
 3 *President seeks to recover costs pursuant to*
 4 *this Act.*

5 “(ii) *INFORMATION NOT DISCLOSED*
 6 *UNDER FREEDOM OF INFORMATION ACT.—*
 7 *This section shall not be construed to re-*
 8 *quire that information that is exempt, by*
 9 *reason of any of paragraphs (1) through (8)*
 10 *of subsection (b) of section 552 of title 5,*
 11 *United States Code, from disclosure pursu-*
 12 *ant to such section, be available to the pub-*
 13 *lic, nor shall the disclosure of any such in-*
 14 *formation pursuant to this section authorize*
 15 *disclosure to other parties or be deemed to*
 16 *waive any confidentiality privilege avail-*
 17 *able to the President under any Federal or*
 18 *State law.”.*

19 (e) *CONFIDENTIALITY REQUIREMENTS FOR CONTRAC-*
 20 *TORS.—Such paragraph (8) of section 104(e) is further*
 21 *amended by adding at the end the following new subpara-*
 22 *graph:*

23 “(G) *PROHIBITION ON DISCLOSURE WITH-*
 24 *OUT PRESIDENTIAL PERMISSION.—*

1 “(i) *IN GENERAL.*—No person de-
2 scribed in clause (ii) may disclose such
3 record, report, document, or other informa-
4 tion described in subparagraph (A) without
5 the permission of the President.

6 “(ii) *COVERED PERSONS.*—A person
7 referred to in clause (i) is any person—

8 “(I) who is not an employee of the
9 Federal Government; and

10 “(II) who, by virtue of the per-
11 son’s duties under a contract or cooper-
12 ative agreement with the United States
13 under this section to perform work for
14 the Federal Government or implement
15 the requirements of this Act, has re-
16 ceived information obtained under this
17 section (or any record, report, or docu-
18 ment containing such information)
19 that, if requested from the Federal Gov-
20 ernment pursuant to section 552 of
21 title 5, United States Code, would be
22 exempt from disclosure by reason of
23 any of paragraphs (1) through (8) of
24 subsection (b) of such section.

1 “(iii) *CONSTRUCTION.*—Nothing in
 2 this subparagraph shall be construed to au-
 3 thorize any person, including the allocator
 4 described in section 129, to withhold any
 5 records, reports, documents, or information
 6 from Congress, or any duly authorized com-
 7 mittee thereof, or limit in any manner the
 8 right of Congress, or any duly authorized
 9 committee thereof, to obtain such records,
 10 reports, documents, or information.”.

11 (f) *CONFORMING AMENDMENTS.*—Section 104(e) (42
 12 U.S.C. 9604(e)) is amended—

13 (1) in paragraph (1)—

14 (A) in the first sentence—

15 (i) by striking “(2), (3), or (4)” and
 16 inserting “(2), (4), or (5)”; and

17 (ii) by striking “(3) or (4)” each place
 18 it appears and inserting “(4) or (5)”; and

19 (B) in the third sentence, by striking “(3)
 20 and (4)” and inserting “(4) and (5)”; and

21 (2) in subparagraph (A) of paragraph (5) (as re-
 22 designated by subsection (b)(1)), by striking “(3)”
 23 and inserting “(4)”; and

1 (3) in subparagraph (A) of paragraph (6) (as re-
 2 designated by subsection (b)(1)), by striking “(2), (3),
 3 or (4)” and inserting “(2), (4), or (5)”.

4 **SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.**

5 (a) *ADDITIONAL AUTHORITY TO ISSUE ORDERS.*—
 6 Section 106(a) (42 U.S.C. 9606(a)) is amended by adding
 7 at the end the following: “The President may amend such
 8 orders and issue additional orders relating to the facility,
 9 as appropriate, without a subsequent finding of such an
 10 imminent and substantial endangerment, to complete all re-
 11 sponse actions necessary to respond to such an actual or
 12 threatened release or to require additional response actions
 13 that are necessary or appropriate to respond to the actual
 14 or threatened release that was the subject of the original
 15 order.”.

16 (b) *SUFFICIENT CAUSE.*—Section 106(b)(1) (42 U.S.C.
 17 9606(b)(1)) is amended—

18 (1) by striking “(b)(1) Any” and inserting the
 19 following:

20 “(b) *VIOLATIONS.*—

21 “(1) *FINE.*—

22 “(A) *IN GENERAL.*—Any”;

23 (2) by striking “to enforce such order”;

24 (3) by inserting before the period at the end the
 25 following: “; or be required to comply with such order,

1 or both, even if another person has complied, or is
 2 complying, with the terms of the same order or an-
 3 other order pertaining to the same facility and release
 4 or threatened release”; and

5 (4) by adding at the end the following:

6 “(B) *SUFFICIENT CAUSE*.—For purposes of
 7 this subsection, the term ‘sufficient cause’
 8 means—

9 “(i) an objectively reasonable belief by
 10 the person to whom the order is issued that
 11 the person is not liable for any response
 12 costs under section 107; or

13 “(ii) a determination, by a Federal
 14 court that has jurisdiction over the order in
 15 an enforcement action, that the action to be
 16 performed pursuant to the order is incon-
 17 sistent with the national contingency plan.

18 “(C) *DETERMINATION OF SUFFICIENT*
 19 *CAUSE*.—The existence or results of an allocation
 20 process pursuant to section 129 shall not affect
 21 or constitute a basis for a determination of ‘suf-
 22 ficient cause’ under this paragraph or under sec-
 23 tion 107(c)(3).”.

24 (c) *REIMBURSEMENT*.—Subsection (b) of section 106
 25 (42 U.S.C. 9606(b)) is further amended in the first sentence

1 *of paragraph (2)(A) by striking “completion of” and insert-*
 2 *ing “the President determines that such person has com-*
 3 *pleted”.*

4 **SEC. 403. LIMITATIONS ON LIABILITY FOR RESPONSE**
 5 **COSTS.**

6 *(a) LIMITATIONS ON LIABILITY.—Section 107 (42*
 7 *U.S.C. 9607) is amended—*

8 *(1) in subsection (a)(4), by striking “by such*
 9 *person,” and all that follows through “shall be liable*
 10 *for—” and inserting the following: “by such person;*
 11 *from which there is a release, or a threatened release, that*
 12 *causes the incurring of response costs, of a hazardous sub-*
 13 *stance, shall be liable for—”; and*

14 *(2) by adding at the end the following new sub-*
 15 *section:*

16 *“(n) LIMITATIONS ON LIABILITY.—*

17 *“(1) DE MICROMIS AND OTHER LIMITATIONS.—*
 18 *Notwithstanding paragraphs (1) through (4) of sub-*
 19 *section (a), a person who does not impede the per-*
 20 *formance of response actions or natural resource res-*
 21 *toration shall not be liable under this Act—*

22 *“(A)(i) to the extent liability is based solely*
 23 *on paragraph (3) or (4) of subsection (a), and*
 24 *the person arranged for disposal, treatment, or*
 25 *transport for disposal or treatment, or accepted*

1 for transport for disposal or treatment, of only
2 municipal solid waste owned or possessed by
3 such person, and the person is—

4 “(I) the owner, operator, or lessee of
5 residential property;

6 “(II) a small business; or

7 “(III) a small nonprofit organization;

8 and

9 “(ii) this subparagraph shall have no effect
10 on the liability of other parties;

11 “(B) to the extent liability is based solely on
12 paragraph (3) or (4) of subsection (a), and the
13 person can demonstrate that it arranged for dis-
14 posal or treatment, or transport for disposal or
15 treatment, or accepted for transport for disposal
16 or treatment, less than 55 gallons of liquid mate-
17 rials containing hazardous substances, or less
18 than 100 pounds of solid materials containing
19 hazardous substances, or such greater or lesser
20 amount as the Administrator may determine by
21 regulation, except in a case in which—

22 “(i) the Administrator has determined
23 that such materials contributed or could
24 contribute significantly to the costs of re-
25 sponse at the facility; or

1 “(ii) the person has failed to respond
2 fully and completely to information requests
3 or administrative subpoenas by the United
4 States;

5 “(C) to the extent liability is based solely on
6 subsection (a)(1) for a release or threat of release
7 from a facility, and the person is a bona fide
8 prospective purchaser of the facility;

9 “(D) to the extent liability is based solely
10 on the person’s status as an owner under sub-
11 section (a)(1) for a release or threat of release
12 from a facility, and the person acquired the fa-
13 cility by inheritance or bequest, if the person—

14 “(i) acquired the real property on
15 which the facility concerned is located after
16 disposal or placement of the hazardous sub-
17 stance took place;

18 “(ii) did not cause or contribute to the
19 release or threat of release; and

20 “(iii) exercised due care with respect to
21 the hazardous substance concerned, includ-
22 ing precautions against foreseeable acts of
23 third parties, taking into consideration the
24 characteristics of such hazardous substance,

1 *in light of all relevant facts and cir-*
2 *cumstances;*

3 “(E) *to the extent the liability of a Federal*
4 *or State governmental entity or municipality is*
5 *based solely on its—*

6 “(i) *ownership of a road, street, or*
7 *other right-of-way or public transportation*
8 *route over which hazardous substances are*
9 *transported; or*

10 “(ii) *granting of a license or permit to*
11 *conduct business;*

12 “(F) *to the extent that liability under sec-*
13 *tion 120(a)(1) based on the actions of the United*
14 *States encompasses actions of a department,*
15 *agency, or instrumentality taken in response to*
16 *a natural disaster pursuant to section 5 of the*
17 *Act of August 18, 1941 (55 Stat. 650, chapter*
18 *377; 33 U.S.C. 701n), or the Robert T. Stafford*
19 *Disaster Relief and Emergency Assistance Act*
20 *(42 U.S.C. 5121 et seq.); or*

21 “(G) *to the extent liability is based solely on*
22 *the status of the person as a railroad owner or*
23 *operator of a spur track, including a spur track*
24 *over land subject to an easement, to a facility*

1 *owned or operated by an unaffiliated person,*
2 *and if—*

3 *“(i) the spur track provides access to a*
4 *main line or branch line track owned by the*
5 *railroad;*

6 *“(ii) the spur track is 10 miles in*
7 *length or less; and*

8 *“(iii) the person who is the railroad*
9 *owner or operator has not caused or con-*
10 *tributed to a release or threat of release at*
11 *the spur track.*

12 *“(2) CERTAIN MUNICIPAL SOLID WASTE MANAGE-*
13 *MENT LIMITATIONS.—Notwithstanding paragraphs*
14 *(1) through (4) of subsection (a), a person shall not*
15 *be liable for more than 10 percent of total response*
16 *costs at a facility, in aggregate, to the extent the per-*
17 *son’s liability is based solely on paragraph (3) or (4)*
18 *of subsection (a), and the arrangement for disposal,*
19 *treatment, or transport for disposal or treatment, or*
20 *the acceptance for transport for disposal or treatment,*
21 *involved only municipal solid waste or sewage sludge.*
22 *In any case in which more than 1 person at a facility*
23 *comes within the coverage of this paragraph, the 10*
24 *percent limitation on liability shall apply to the ag-*
25 *gregate liability of all such persons. Such limitation*

1 *on liability shall apply only if either the acts or*
 2 *omissions giving rise to liability occurred before the*
 3 *date occurring 3 years after the date of enactment of*
 4 *this paragraph, or the person asserting the limitation*
 5 *institutes or participates in a qualified household*
 6 *hazardous waste collection program, or, in the case of*
 7 *a person other than a municipality, participates, if*
 8 *eligible, in any qualified household hazardous waste*
 9 *collection program in the vicinity of the facility.”.*

10 **(b) PROSPECTIVE PURCHASER AND WINDFALL**
 11 **LIEN.**—*Section 107 (as amended by subsection (a)(2)) is*
 12 *further amended by inserting after subsection (n) the follow-*
 13 *ing new subsection:*

14 **“(o) PROSPECTIVE PURCHASER AND WINDFALL**
 15 **LIEN.**—

16 **“(1) LIEN.**—*In any case in which there are un-*
 17 *recovered response costs at a facility for which an*
 18 *owner of the facility is not liable by reason of sub-*
 19 *section (n)(1)(C), and each of the conditions described*
 20 *in paragraph (2) is met, the United States shall have*
 21 *a lien upon such facility, or may obtain from the ap-*
 22 *propriate responsible party or parties, a lien on other*
 23 *property or other assurances of payment satisfactory*
 24 *to the Administrator, for such unrecovered costs. Such*
 25 *lien—*

1 “(A) shall not exceed the increase in fair
2 market value of the property attributable to the
3 response action at the time of a subsequent sale
4 or other disposition of the property;

5 “(B) shall arise at the time costs are first
6 incurred by the United States with respect to a
7 response action at the facility;

8 “(C) shall be subject to the requirements for
9 notice and validity established in paragraph (3)
10 of subsection (l); and

11 “(D) shall continue until the earlier of sat-
12 isfaction of the lien or recovery of all response
13 costs incurred at the facility.

14 “(2) CONDITIONS.—The conditions referred to in
15 paragraph (1) are the following:

16 “(A) RESPONSE ACTION.—A response action
17 for which there are unrecovered costs is carried
18 out at the facility.

19 “(B) FAIR MARKET VALUE.—Such response
20 action increases the fair market value of the fa-
21 cility above the fair market value of the facility
22 that existed 180 days before the response action
23 was taken.

24 “(C) SALE.—A sale or other disposition of
25 all or a portion of the facility has occurred.”.

1 (c) *FEDERAL ENTITIES AND FACILITIES*.—Section 120
2 (42 U.S.C. 9620) is amended—

3 (1) by striking the section heading and inserting
4 the following:

5 **“SEC. 120. FEDERAL ENTITIES AND FACILITIES.”;**

6 and

7 (2) in subsection (a)—

8 (A) by striking paragraph (1) and inserting
9 the following:

10 “(1) *IN GENERAL*.—

11 “(A) *REQUIREMENTS*.—Each department,
12 agency, and instrumentality of the executive, leg-
13 islative, and judicial branches of the Federal
14 Government shall be subject to, and comply with,
15 all Federal, State, interstate, and local require-
16 ments, both substantive and procedural (includ-
17 ing but not limited to any requirements for per-
18 mits, reporting, or any provisions for injunctive
19 relief and such sanctions as may be imposed by
20 a court to enforce such relief), regarding response
21 actions related to, or management of, hazardous
22 substances or pollutants or contaminants in the
23 same manner, and to the same extent, as any
24 nongovernmental person is subject to such re-
25 quirements, including liability under sections

1 106 and 107 and the payment of reasonable serv-
2 ice charges.

3 “(B) *ORDERS, PENALTIES, AND FINES.*—
4 The Federal, State, interstate, and local sub-
5 stantive and procedural requirements referred to
6 in subparagraph (A) include all administrative
7 orders and all civil and administrative penalties
8 and fines, regardless of whether such penalties
9 and fines are punitive or coercive in nature or
10 are imposed for isolated, intermittent, or con-
11 tinuing violations. The United States hereby ex-
12 pressly waives any immunity otherwise applica-
13 ble to the United States with respect to any such
14 substantive or procedural requirement (including
15 but not limited to any injunctive relief, adminis-
16 trative order, or civil or administrative penalty
17 or fine referred to in the preceding sentence, or
18 reasonable service charge).

19 “(C) *REASONABLE SERVICE CHARGES.*—The
20 reasonable service charges referred to in this
21 paragraph include fees or charges assessed in
22 connection with the processing and issuance of
23 permits, renewal of permits, amendments to per-
24 mits, review of plans, studies, and other docu-
25 ments, and inspection and monitoring of facili-

1 *ties, as well as any other nondiscriminatory*
2 *charges that are assessed in connection with a*
3 *State, interstate, or local response program.*

4 “(D) *PROHIBITION ON IMMUNITY OR EX-*
5 *EMPTION FROM PROCESS OR SANCTION.—Neither*
6 *the United States, nor any agent, employee, or*
7 *officer thereof, shall be immune or exempt from*
8 *any process or sanction of any State or Federal*
9 *court with respect to the enforcement of any in-*
10 *junctive relief under this Act.*

11 “(E) *PROHIBITION ON PERSONAL CIVIL LI-*
12 *ABILITY.—No agent, employee, or officer of the*
13 *United States shall be personally liable for any*
14 *civil penalty under any Federal or State re-*
15 *sponse law with respect to any act or omission*
16 *within the scope of their official duties. An*
17 *agent, employee, or officer of the United States*
18 *may be subject to any criminal sanction (includ-*
19 *ing any fine or imprisonment) under any Fed-*
20 *eral or State response law, but no department,*
21 *agency, or instrumentality of the executive, legis-*
22 *lative, or judicial branch of the Federal Govern-*
23 *ment shall be subject to any such sanction.*

24 “(F) *LIMITATION ON WAIVER OF SOVEREIGN*
25 *IMMUNITY.—The waiver of sovereign immunity*

1 *provided in this paragraph shall not apply to*
2 *the extent a State law would apply any standard*
3 *or requirement to such Federal department,*
4 *agency, or instrumentality in a manner that is*
5 *more stringent than such standard or require-*
6 *ment would be applied to any other person.*

7 “(G) *CONSTRUCTION.*—*Nothing in this sec-*
8 *tion shall be construed to affect the liability of*
9 *any person or entity other than a department,*
10 *agency, or instrumentality of the Federal Gov-*
11 *ernment under sections 106 and 107.*

12 “(H) *POWERS OF ADMINISTRATOR.*—*The*
13 *Administrator may issue an order under section*
14 *106 to any department, agency, or instrumentality*
15 *of the executive, legislative, or judicial branch*
16 *of the Federal Government. The Administrator*
17 *shall initiate an administrative enforcement ac-*
18 *tion against such a department, agency, or in-*
19 *strumentality in the same manner and under the*
20 *same circumstances as action would be initiated*
21 *against any other person.*

22 “(I) *CONTRIBUTION.*—*Each such depart-*
23 *ment, agency, and instrumentality shall have the*
24 *right to contribution protection set forth in sec-*
25 *tion 113, when such department, agency, or in-*

1 *strumentality resolves its liability under this*
2 *Act.”;*

3 *(B) by striking paragraph (4); and*

4 *(C) by inserting “(except for section 119)”*
5 *after “responsibility” in paragraph (3).*

6 *(d) COMMON CARRIERS.—Section 107(b)(3) (42*
7 *U.S.C. 9607(b)(3)) is amended by striking “a published tar-*
8 *iff and acceptance” and inserting “a contract”.*

9 *(e) CONFORMING AMENDMENTS.—*

10 *(1) Section 107 (42 U.S.C. 9607) is amended—*

11 *(A) in the matter following subparagraph*
12 *(D) of the matter following paragraph (4) of sub-*
13 *section (a), by inserting “of the matter following*
14 *paragraph (4)” after “subparagraphs (A)*
15 *through (D)”;* and

16 *(B) in subsection (f)(1), by inserting after*
17 *“subparagraph (C)” each place it appears the*
18 *following: “of the matter following paragraph*
19 *(4)”.*

20 *(2) Section 122(j)(2) (42 U.S.C. 9622(j)(2)) is*
21 *amended by striking “section 107(a)(4)(C)” and in-*
22 *serting “subparagraph (C) of the matter following*
23 *paragraph (4) of section 107(a)”.*

1 **SEC. 404. LIABILITY.**

2 (a) *LIABILITY.*—Section 107 (42 U.S.C. 9607) (as
3 amended by section 403) is further amended—

4 (1) in subsection (a)—

5 (A) in paragraph (1), by striking “and”
6 and inserting “or”;

7 (B) in paragraph (3), by striking “such
8 person,” and inserting “such person, or”;

9 (C) in subparagraph (A) of the matter fol-
10 lowing paragraph (4), by inserting “, including
11 the costs of overseeing response actions conducted
12 by potentially responsible parties,” before “in-
13 curred by the United States”; and

14 (D) in subparagraph (B) of the matter fol-
15 lowing paragraph (4)—

16 (i) by striking “other” the second place
17 it appears; and

18 (ii) by inserting “, other than the
19 United States, a State, or an Indian tribe,”
20 before “consistent with the national contin-
21 gency plan”; and

22 (2) in subsection (n), by adding at the end the
23 following new paragraph:

24 “(3) *RESPONSE ACTION OVERSIGHT COSTS.*—The
25 Administrator shall calculate the Environmental Pro-
26 tection Agency response action oversight costs (which

1 *shall consist of the direct costs of oversight and the in-*
2 *direct costs associated with the direct costs) for which*
3 *potentially responsible parties are liable under this*
4 *section (pursuant to subparagraph (A) of the matter*
5 *following paragraph (4) of subsection (a)) on a na-*
6 *tional basis as a percentage of total response costs in-*
7 *curring by potentially responsible parties (in this*
8 *paragraph referred to as the ‘national oversight rate’).*
9 *The calculation shall be based on data comparing*
10 *such oversight costs of the Environmental Protection*
11 *Agency to estimated or actual response costs incurred*
12 *by potentially responsible parties. The Administrator*
13 *shall periodically review and update the national*
14 *oversight rate. If the Administrator calculates that the*
15 *rate would exceed 10 percent of total response costs*
16 *incurred by potentially responsible parties the rate*
17 *shall be deemed to be 10 percent. The national over-*
18 *sight rate shall be applied to all settlements under sec-*
19 *tion 129.”.*

20 (b) *AMOUNT OF LIABILITY.*—Section 107(c)(3) (42
21 U.S.C. 9607(c)(3)) is amended in the first sentence—

22 (1) by inserting “, in addition to liability for
23 any response costs incurred by the United States as
24 a result of such failure to take proper action,” after
25 “person” the second place it appears; and

1 (2) by striking “at least equal to,” and all that
 2 follows through the end of the sentence and inserting
 3 “of up to 3 times the amount of such response costs.”.

4 (c) *TIMING.*—Section 119 (42 U.S.C. 9619) is amend-
 5 ed—

6 (1) in subsection (e)(2)(C), by striking “1996,”
 7 and inserting “2000,”; and

8 (2) in subsection (g)(5), by striking “1995.” and
 9 inserting “1999.”.

10 (d) *REMINING LIMITATION.*—Section 107(n) (42
 11 U.S.C. 9607(n)) (as added by section 403(a)(2) and amend-
 12 ed by subsection (a)(2)) is further amended by adding at
 13 the end the following new paragraph:

14 “(4) *REMINING LIMITATION.*—

15 “(A) *IN GENERAL.*—

16 “(i) *LIMITATION.*—Notwithstanding
 17 paragraphs (1) through (4) of subsection (a)
 18 and subject to clause (ii) and subpara-
 19 graphs (B) and (C), a person who does not
 20 impede the performance of response actions
 21 or natural resource restoration and who is
 22 a reminer shall not be liable, to the extent
 23 liability is based solely on a remining oper-
 24 ation by the person at a facility, to any
 25 person for response costs, damages, or ex-

1 *penses, or otherwise, under this Act as a re-*
2 *sult of the remining operation.*

3 *“(ii) EXCEPTION.—Clause (i) shall not*
4 *apply in the case of a release or threatened*
5 *release of a hazardous substance or pollut-*
6 *ant or contaminant that is caused by con-*
7 *duct of the reminer that is negligent or*
8 *grossly negligent, or that constitutes inten-*
9 *tional misconduct.*

10 *“(B) CONDITIONS ON LIMITATION.—Except*
11 *as provided in subparagraph (D), the limitation*
12 *on liability provided by subparagraph (A) shall*
13 *be applicable only—*

14 *“(i) if the President has determined*
15 *that the remining operation carried out by*
16 *the person asserting the limitation has the*
17 *potential to—*

18 *“(I) result in a significant recov-*
19 *ery of a metal or mineral; and*

20 *“(II) facilitate a removal or a re-*
21 *medial action at the facility, by reduc-*
22 *ing or eliminating a source of a release*
23 *or threatened release of a hazardous*
24 *substance or pollutant or contaminant*

1 or by reducing the cost of the antici-
2 pated removal or remedial action;

3 “(ii)(I) if the President has entered
4 into a contract or agreement with the per-
5 son, which contract or agreement may be
6 subject to such terms and conditions as the
7 President considers appropriate (including
8 reimbursement of oversight costs specifically
9 attributable to the contract or agreement for
10 a remining operation) to ensure that the
11 remining operation will facilitate a removal
12 or a remedial action at the facility to the
13 maximum extent practicable and will not
14 cause any additional significant adverse ef-
15 fect on human health or the environment;
16 and

17 “(II) if not later than the date that is
18 30 days after the President enters into the
19 contract or agreement with the reminer—

20 “(aa) the contract or agreement is
21 made available to the public; and

22 “(bb) a notice of the availability
23 is published in the Federal Register;

24 “(iii) if the remining operation is car-
25 ried out in a manner consistent with any

1 *such contract or agreement and with such*
2 *regulations as the President may promul-*
3 *gate to ensure that the remining operation*
4 *is carried out in a manner to ensure protec-*
5 *tion of human health and the environment;*
6 *and*

7 *“(iv) to a release or threatened release*
8 *of a hazardous substance or pollutant or*
9 *contaminant that is attributable to extrac-*
10 *tion, beneficiation, or a processing oper-*
11 *ation, or the management of a material or*
12 *solid waste from the extraction,*
13 *beneficiation, or processing operation, prior*
14 *to February 3, 1994.*

15 *“(C) RESTRICTIONS ON LIMITATION.—*

16 *“(i) PERSONS OTHERWISE LIABLE.—*
17 *The limitation on liability provided by sub-*
18 *paragraph (A) shall not apply to, and may*
19 *not be asserted by, a person who—*

20 *“(I) would otherwise be liable*
21 *under this section with respect to a re-*
22 *lease or threatened release of a hazard-*
23 *ous substance or pollutant or contami-*
24 *nant at the facility (including if the*
25 *person were not a reminer); or*

1 “(II) is directly or indirectly af-
2 filiated with such an otherwise liable
3 person other than in connection with a
4 contractual relationship relating to a
5 remining operation.

6 “(ii) *ASSERTION OF DEFENSES.*—The
7 conduct of a remaining operation subject to
8 the limitation on liability provided by sub-
9 paragraph (A) shall not in any manner be
10 a basis for an otherwise liable person to as-
11 sert a defense pursuant to subsection (b).

12 “(iii) *OTHER LAWS.*—This paragraph
13 shall not be construed to affect, in any man-
14 ner, the obligation of a person to comply
15 with any Federal, State, or local statute,
16 regulation, ordinance, or other requirement
17 that may be applicable to a remaining oper-
18 ation, nor to limit or preempt any Federal,
19 State, or local regulatory authority with re-
20 spect to a remaining operation.

21 “(iv) *HYDROCARBON MINING OPER-*
22 *ATIONS.*—This paragraph shall not be con-
23 strued to affect, in any manner, the liabil-
24 ity of a person who carries out a remaining

1 *operation with respect to coal or another*
2 *hydrocarbon.*

3 “(v) *PENDING CLAIMS.*—*This para-*
4 *graph shall not be construed to apply to, or*
5 *be asserted with respect to, any claim pend-*
6 *ing as of the date of enactment of this para-*
7 *graph in any administrative or judicial ac-*
8 *tion or proceeding for the recovery of re-*
9 *sponse costs or damages, or for the perform-*
10 *ance of a response action or restoration.*

11 “(vi) *INDEMNIFICATION.*—*With respect*
12 *to a contract or agreement described in sub-*
13 *paragraph (B)(ii), the President shall not*
14 *have authority to indemnify or hold harm-*
15 *less the reminer or other person carrying*
16 *out the remining operation.*

17 “(D) *LIABILITY FOR REMINING OPERATIONS*
18 *PRIOR TO QUALIFYING FOR LIMITATION.*—*The li-*
19 *ability of a person who locates or acquires an in-*
20 *terest in a mining claim on Federal land where*
21 *the extraction, beneficiation, or processing of any*
22 *ore or mineral, or the management of a material*
23 *or solid waste from the extraction, beneficiation,*
24 *or processing, occurred prior to February 3,*
25 *1994, shall be subject to the limitation on liabil-*

1 *ity provided by subparagraph (A), notwithstanding*
2 *ing the absence of a prior determination by the*
3 *President, or a contract or an agreement, pursu-*
4 *ant to subparagraph (B), if the person—*

5 *“(i) does not cause or contribute to a*
6 *release of a hazardous substance or pollut-*
7 *ant or contaminant at the facility prior to*
8 *qualifying for the limitation on liability*
9 *provided by subparagraph (A); and*

10 *“(ii) within 3 years after locating or*
11 *acquiring the interest in the mining*
12 *claim—*

13 *“(I) qualifies for the limitation on*
14 *liability provided by subparagraph*
15 *(A); or*

16 *“(II) abandons or otherwise relin-*
17 *quishes the interest in the mining*
18 *claim.*

19 *“(E) LIABILITY OF GOVERNMENTAL EM-*
20 *PLOYEES OVERSEEING REMINING OPERATIONS.—*
21 *An employee of the Federal Government, or a de-*
22 *partment, agency, or instrumentality of the Fed-*
23 *eral Government, or an employee of a State or*
24 *municipality, who provides oversight or other*
25 *services relating to a contract or an agreement*

1 for a remining operation, while acting within
 2 the scope of authority of the employee as a gov-
 3 ernmental employee, shall be subject to the limi-
 4 tation on liability provided by subparagraph (A)
 5 in the same manner as if the employee were a
 6 reminer.

7 “(F) *TIMELY DETERMINATION BY THE*
 8 *PRESIDENT.*—After receiving a written request
 9 for a contract or agreement described in sub-
 10 paragraph (B)(ii), the President shall make any
 11 determinations required by such subparagraph
 12 not later than 180 days after the receipt of the
 13 request.

14 “(G) *DEFINITIONS.*—As used in this para-
 15 graph:

16 “(i) *REMINER.*—The term ‘reminer’
 17 means a person who owns or operates a fa-
 18 cility—

19 “(I) at which another unaffiliated
 20 person prior to February 3, 1994, en-
 21 gaged in the extraction, beneficiation,
 22 or processing of any ore or mineral, or
 23 the management of a material or solid
 24 waste from the extraction,
 25 beneficiation, or processing; and

1 “(II) at which there is an ongoing
2 release or threatened release of a haz-
3 ardous substance or pollutant or con-
4 taminant because of the past activity
5 referred to in subclause (I).

6 “(ii) REMINING OPERATION.—

7 “(I) IN GENERAL.—Subject to
8 subclause (II), the term ‘remining op-
9 eration’ means any of the following ac-
10 tivities when carried out by a reminer:

11 “(aa) The extraction,
12 beneficiation, or processing of any
13 ore or mineral.

14 “(bb) The beneficiation, proc-
15 essing, reclamation, or beneficial
16 use or reuse of any material or
17 solid waste from the extraction,
18 beneficiation, or processing of any
19 ore or mineral at a facility at
20 which the carrying out of extrac-
21 tion, beneficiation, or processing
22 prior to February 3, 1994, has re-
23 sulted in an ongoing release or
24 threatened release of a hazardous

1 *substance or pollutant or contami-*
2 *nant.*

3 “(cc) The investigation or
4 evaluation of a facility to deter-
5 mine whether an activity de-
6 scribed in item (aa) or (bb) is eco-
7 nomically feasible, including the
8 sampling of any ore, other mate-
9 rial, or solid waste, surveying,
10 monitoring of environmental
11 media, or an exploration activity.

12 “(dd) Any other activity, in-
13 cluding a construction, mainte-
14 nance, or waste management ac-
15 tivity, that is incidental to an ac-
16 tivity described in item (aa), (bb),
17 or (cc).

18 “(ee) The acquisition and re-
19 tention of any ownership, lease-
20 hold, or other interest in the facil-
21 ity needed to engage in an activ-
22 ity described in item (aa), (bb),
23 (cc), or (dd), except that in order
24 for the acquisition or retention of
25 any ownership, leasehold, or other

1 *such interest to be subject to the*
2 *limitation on liability provided*
3 *by subparagraph (A), the reminer*
4 *shall be a person described in sub-*
5 *paragraphs (B), (C), (E), and (F)*
6 *of section 101(39).*

7 “(II) *EXCLUSION.*—The term
8 ‘*remining operation*’ does not include
9 *smelting.*

10 “(iii) *SOLID WASTE.*—The term ‘*solid*
11 *waste*’ has the meaning provided in section
12 1004(27) of the Solid Waste Disposal Act
13 (42 U.S.C. 6903(27)).”.

14 (e) *DEFINITION OF CONTRACTUAL RELATIONSHIP.*—
15 Section 101(35) (42 U.S.C. 9601(35)) is amended by add-
16 ing at the end the following new subparagraph:

17 “(E) *PATENTS.*—The term ‘*contractual re-*
18 *lationship*’ does not include the initial filing by
19 a claimant of an unpatented mining claim or
20 the issuance of a patent for such a claim.”.

21 **SEC. 405. CIVIL PROCEEDINGS.**

22 (a) *PETITIONS.*—Section 113(a) (42 U.S.C. 9613(a))
23 is amended—

1 (1) by striking “upon application by any inter-
2 ested person” and inserting “by any interested person
3 through the filing of a petition for review”; and

4 (2) by striking “application shall be made” and
5 inserting “petition shall be filed”.

6 (b) *PERIOD IN WHICH ACTION MAY BE BROUGHT.*—
7 Section 113(g) (42 U.S.C. 9613(g)) is amended by striking
8 paragraphs (2) and (3) and inserting the following:

9 “(2) *ACTIONS FOR RECOVERY OF COSTS.*—

10 “(A) *INITIAL ACTION.*—Except as provided
11 in subparagraph (C), an initial action for recov-
12 ery of costs referred to in section 107 shall be
13 commenced—

14 “(i) for a removal action, within 3
15 years after completion of all removal action
16 taken with respect to the facility involved,
17 including offsite disposal of any removed
18 materials, except that if physical onsite con-
19 struction of the remedial action is initiated
20 within 3 years after the completion of all
21 removal action taken with respect to the fa-
22 cility, costs incurred for removal action
23 may be recovered in a cost recovery action
24 brought under clause (ii); and

1 “(ii) for a remedial action, within 6
2 years after initiation of physical onsite con-
3 struction of the remedial action.

4 “(B) *DECLARATORY JUDGMENT AND SUBSE-*
5 *QUENT ACTIONS.*—In any such action for recov-
6 ery of costs, the court shall enter a declaratory
7 judgment on liability for response costs or dam-
8 ages that will be binding in such action or in
9 any subsequent action or actions to recover fur-
10 ther response costs or damages with respect to the
11 vessel or facility. A subsequent action or actions
12 under section 107 for further response costs at
13 the vessel or facility may be maintained at any
14 time during the response action, but shall be
15 commenced no later than 3 years after the date
16 of completion of all response action with respect
17 to the vessel or facility. Except as otherwise pro-
18 vided in this paragraph, an action may be com-
19 menced under section 107 for recovery of such
20 costs at any time after such costs have been in-
21 curred.

22 “(C) *COMMENCEMENT.*—An action by any
23 potentially responsible party against another po-
24 tentially responsible party for recovery of any re-

1 *sponse costs or damages under section 107 shall*
 2 *be commenced within the later of—*

3 *“(i) the time limitations set forth in*
 4 *subparagraph (A); or*

5 *“(ii) where recovery is sought for such*
 6 *costs or damages paid pursuant to a judg-*
 7 *ment or settlement, 3 years after—*

8 *“(I) the date of such judgment in*
 9 *any action under this Act for recovery*
 10 *of such costs or damages; or*

11 *“(II) the date of any administra-*
 12 *tive order or judicial settlement for re-*
 13 *covery of the costs or damages paid or*
 14 *incurred pursuant to such a settlement.*

15 *“(3) CLAIMS BY THE UNITED STATES OR*
 16 *STATES.—Claims by the United States under section*
 17 *106 and claims by the United States or a State under*
 18 *section 107(a) shall not be deemed to be compulsory*
 19 *counterclaims in an action against the United States*
 20 *or a State seeking response costs, contribution, or*
 21 *damages, or with respect to any other claim by any*
 22 *person under this Act.”.*

23 *(c) JUDICIAL REVIEW.—Section 113(j)(1) (42 U.S.C.*
 24 *9613(j)(1)) is amended by striking “or ordered by the Presi-*

1 *dent” and inserting “or selected by the President pursuant*
 2 *to this Act, or ordered or sought by the President,”.*

3 *(d) CONFORMING AMENDMENT.—Section 113(g)(1) (42*
 4 *U.S.C. 9613(g)(1)) is amended by striking “paragraphs (3*
 5 *and (4)” and inserting “paragraph (4)”.*

6 **SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.**

7 *Section 113(f) (42 U.S.C. 9613(f)) is amended—*

8 *(1) in paragraph (1)—*

9 *(A) in the first sentence, by striking “Any*
 10 *person” and inserting “Except as provided in*
 11 *paragraph (4), any person who is liable or po-*
 12 *tentially liable under section 107(a)”;*

13 *(B) in the first sentence, by striking “, dur-*
 14 *ing or following any civil action under section*
 15 *106 or under section 107(a).” and inserting “in*
 16 *a claim asserted under section 107(a).”;*

17 *(C) in the second sentence, by striking “this*
 18 *section” and inserting “section 107(a), this sec-*
 19 *tion,”; and*

20 *(D) by striking the sentence beginning with*
 21 *“Nothing in this subsection”;*

22 *(2) by striking paragraph (2) and inserting the*
 23 *following:*

24 *“(2) SETTLEMENTS.—A person who has resolved*
 25 *its liability to the United States in an administrative*

1 *or judicially approved settlement under this Act shall*
2 *not be liable for contribution or any other claims by*
3 *other persons regarding response actions, response*
4 *costs, or damages addressed in the settlement. A per-*
5 *son who has resolved its liability to a State or an In-*
6 *dian tribe in an administrative or judicially ap-*
7 *proved settlement under this Act shall not be liable for*
8 *contribution or any other claims by persons other*
9 *than the United States regarding response costs or*
10 *damages addressed in the settlement for which the*
11 *State or Indian tribe has a claim under this title. A*
12 *settlement described in this paragraph shall not be*
13 *construed to discharge any other potentially respon-*
14 *sible persons unless its terms so provide, but it re-*
15 *duces the potential liability of such other persons by*
16 *the amount of the settlement. The protection afforded*
17 *by this subsection shall include protection against*
18 *claims, under Federal or State law, that may be as-*
19 *serted against a settling party for recovery of response*
20 *costs or damages incurred or paid by another person,*
21 *if such costs or damages are addressed in the settle-*
22 *ment, but shall not include protection against claims*
23 *based on contractual indemnification or other express*
24 *contractual agreements to pay such costs or dam-*
25 *ages.”; and*

1 (3) *by adding at the end the following new para-*
2 *graph:*

3 “(4) *LIMITATIONS ON CONTRIBUTION ACTIONS.—*

4 “(A) *CIRCUMSTANCES.—There shall be no*
5 *right of contribution in any of the following cir-*
6 *cumstances:*

7 “(i) *WAIVER.—The person asserting*
8 *the right of contribution has waived the*
9 *right in a settlement pursuant to this Act.*

10 “(ii) *NO LIABILITY.—The person from*
11 *whom contribution is sought is not liable*
12 *under this Act.*

13 “(iii) *SETTLEMENT.—The person from*
14 *whom contribution is sought has entered*
15 *into a settlement with the United States,*
16 *with respect to matters addressed in that*
17 *settlement.*

18 “(B) *COSTS OF DEFENDING CLAIM.—Any*
19 *person who commences an action for contribu-*
20 *tion shall be liable to the person against whom*
21 *the claim of contribution is brought for all rea-*
22 *sonable costs of defending against the claim, in-*
23 *cluding all reasonable attorneys’ and expert wit-*
24 *ness fees, if—*

1 “(i) the action is barred by subpara-
2 graph (A); or

3 “(ii) the action is brought during the
4 moratorium pursuant to section 129.”.

5 **SEC. 407. SCOPE OF RULEMAKING AUTHORITY.**

6 Section 115 (42 U.S.C. 9615) is amended to read as
7 follows:

8 **“SEC. 115. PRESIDENTIAL DELEGATION AND ASSIGNMENT**
9 **OF DUTIES OR POWERS AND PROMULGATION**
10 **OF REGULATIONS.**

11 “The President (or the Administrator where applica-
12 ble) is authorized to promulgate such regulations as the
13 President (or the Administrator where applicable) deter-
14 mines to be necessary to carry out the provisions of this
15 Act, and to delegate and assign any duties or powers im-
16 posed upon or assigned to the President (or the Adminis-
17 trator where applicable) by this Act, including the author-
18 ity to promulgate regulations. The authority granted to the
19 President (or the Administrator where applicable) under
20 this section includes the authority to issue rules to clarify
21 or interpret, in a manner that is reasonable and consistent
22 with this Act, all terms, as necessary to determine the liabil-
23 ity of a party under section 107.”.

24 **SEC. 408. ENHANCEMENT OF SETTLEMENT AUTHORITIES.**

25 Section 122 (42 U.S.C. 9622) is amended—

1 (1) in subsection (a), by inserting after the first
 2 sentence the following new sentence: “The President
 3 may include in an agreement entered into pursuant
 4 to this section terms and conditions relating to the
 5 method, terms, and time of payment of any amount
 6 to be paid by the person referred to in the preceding
 7 sentence with respect to a response action.”;

8 (2) in subsection (b)—

9 (A) by striking paragraph (3); and

10 (B) by redesignating paragraph (4) as
 11 paragraph (3);

12 (3) in subsection (e)—

13 (A) by striking paragraph (3); and

14 (B) by redesignating paragraphs (4) and
 15 (5) as paragraphs (3) and (4), respectively;

16 (4)(A) by transferring paragraph (6) of sub-
 17 section (e) to the end of the section and redesignating
 18 such paragraph as subsection (n);

19 (B) by indenting such subsection (n) and align-
 20 ing the margins of such subsection (n) with the mar-
 21 gins of subsection (m); and

22 (C) by adding after such subsection (n) the fol-
 23 lowing new subsections:

24 “(o) RETENTION OF FUNDS AND USE OF FINANCIAL
 25 INSTRUMENTS.—

1 “(1) *RETENTION OF FUNDS.*—If, as part of any
2 *settlement agreement under this Act, the potentially*
3 *responsible parties have paid or will be paying*
4 *amounts to the President for carrying out any re-*
5 *sponse action, the President may retain such amounts*
6 *in interest bearing accounts, and use such amounts,*
7 *together with accrued interest, to conduct or enable*
8 *other persons to conduct such response action.*

9 “(2) *USE OF FINANCIAL INSTRUMENTS.*—

10 “(A) *IN GENERAL.*—If, as part of any *set-*
11 *tlement agreement under this Act, a potentially*
12 *responsible party will pay an amount to the*
13 *President for carrying out any response action,*
14 *the President may assume ownership of a finan-*
15 *cial instrument that runs irrevocably to the ben-*
16 *efit of the President and may use the amount*
17 *made available through the instrument to con-*
18 *duct or enable other persons to conduct such re-*
19 *sponse action.*

20 “(B) *DEFINITION.*—As used in this *para-*
21 *graph, the term ‘financial instrument’ means an*
22 *instrument—*

23 “(i) *that is an annuity contract, a*
24 *funding agreement, or a similar instru-*
25 *ment;*

1 “(ii) that includes a defined schedule of
2 periodic payments that coincides with the
3 obligations set forth in the settlement agree-
4 ment; and

5 “(iii) under which the periodic pay-
6 ments will be made to the owner of the in-
7 strument, or be made in such manner as the
8 owner may direct, for response costs at the
9 facility that is the subject of the settlement
10 agreement.

11 “(p) CHALLENGE TO COST RECOVERY COMPONENT OF
12 SETTLEMENT.—Notwithstanding the limitations on review
13 in section 113(h), and except as provided in subsection (g),
14 a person whose potential claim for response costs or con-
15 tribution is limited as a result of contribution protection
16 afforded by an administrative settlement under this section
17 or section 129 may challenge the cost recovery component
18 of such settlement. Such a challenge may be made only by
19 filing a complaint against the Administrator, or a State
20 that is exercising authority delegated under section 127,
21 with respect to the facility in a United States district court
22 within 60 days after such settlement becomes final. Venue
23 shall lie in the district in which the principal office of the
24 appropriate Regional Administrator is located. Any such
25 review of an administrative settlement shall be limited to

1 *the administrative record, and the settlement shall be*
 2 *upheld unless the objecting party demonstrates on that*
 3 *record that the decision of the President or the State to enter*
 4 *into the administrative settlement was arbitrary, capri-*
 5 *cious, or otherwise not in accordance with law. Nothing in*
 6 *this subsection shall be construed to allow a challenge to*
 7 *a selection of a response action that would otherwise be*
 8 *barred by section 113(h).*

9 “(q) *UNSUCCESSFUL CHALLENGERS LIABLE FOR AT-*
 10 *TORNEY’S FEES.*—Any party who challenges any settlement
 11 entered into between the Administrator and any potentially
 12 responsible party pursuant to this section or section 129,
 13 and who is not successful in overturning or modifying the
 14 settlement, shall be liable to the United States and any set-
 15 tling party for all reasonable attorney’s fees and costs in-
 16 curred in defending the settlement.

17 “(r) *PROFESSIONAL SERVICES.*—The Administrator
 18 has the authority to use the procedures set forth in section
 19 109(e) to obtain the services of a neutral professional to as-
 20 sist in the conduct of settlement negotiations under this sec-
 21 tion, whether or not the neutral professional actually par-
 22 ticipates in such negotiations.”;

23 (5) in subsection (f)—

24 (A) by striking paragraph (1) and inserting
 25 the following new paragraph:

1 “(1) *FINAL COVENANTS.*—*The President shall*
2 *offer potentially responsible parties who enter into*
3 *settlement agreements a final covenant not to sue con-*
4 *cerning any liability to the United States under this*
5 *Act, including a covenant with respect to future li-*
6 *ability, for response actions or response costs ad-*
7 *ressed in the settlement, if all of the following condi-*
8 *tions are met:*

9 “(A) *ASSURANCES OF PERFORMANCE.*—
10 *Such a settling party agrees to perform, or there*
11 *are other adequate assurances of the performance*
12 *of, a final remedial action authorized by the Ad-*
13 *ministrator for the release or threat of release*
14 *that is the subject of the settlement.*

15 “(B) *PROHIBITION ON HAZARDOUS SUB-*
16 *STANCES AT CONCENTRATIONS ABOVE PROTEC-*
17 *TIVE CONCENTRATION LEVELS.*—*The remedial*
18 *action does not provide that any hazardous sub-*
19 *stances will remain at the facility at concentra-*
20 *tions above the protective concentration levels es-*
21 *tablished pursuant to section 121(d) after the*
22 *final remedial action is completed.*

23 “(C) *PRIOR TO COMMENCEMENT OF LITIGA-*
24 *TION.*—*The settlement agreement has been*
25 *reached prior to the commencement of litigation*

1 *against the settling party under section 106 or*
2 *107 with respect to this facility.*

3 “(D) *WAIVER.*—*The settling party waives*
4 *all contribution rights against other potentially*
5 *responsible parties at the facility.*

6 “(E) *PREMIUM.*—

7 “(i) *IN GENERAL.*—*Subject to clauses*
8 *(ii) and (iii), the settling party pays a pre-*
9 *mium that compensates for the risks of—*

10 “(I) *remedy failure;*

11 “(II) *future liability resulting*
12 *from unknown conditions;*

13 “(III) *unanticipated increases in*
14 *the cost of any uncompleted response*
15 *action, unless the settling party has*
16 *agreed to fully perform the response ac-*
17 *tion; and*

18 “(IV) *the United States litigation*
19 *risk as provided in section 129 with*
20 *respect to persons who have not re-*
21 *solved their liability to the United*
22 *States under this Act, unless all parties*
23 *have settled their liability to the Unit-*
24 *ed States, or the settlement covers 100*

1 *percent of the United States response*
 2 *costs.*

3 “(ii) *PRESIDENTIAL DISCRETION.*—
 4 *Subject to clause (iii), the President shall*
 5 *have sole discretion to determine the appro-*
 6 *priate amount of any such premium, and*
 7 *such determinations are committed to the*
 8 *President’s discretion. The President shall*
 9 *have discretion to waive or reduce the pre-*
 10 *mium payment for persons who dem-*
 11 *onstrate an inability to pay such a pre-*
 12 *mium.*

13 “(iii) *DE MINIMIS SETTLEMENTS.*—*In*
 14 *the case of a de minimis settlement, the*
 15 *amount of the premium shall not exceed the*
 16 *liability of the settling party for response*
 17 *costs.*

18 “(F) *SETTLEMENT OTHERWISE ACCEPT-*
 19 *ABLE.*—*The settlement is otherwise acceptable to*
 20 *the United States.*

21 “(G) *PUBLIC INTEREST.*—*The covenant not*
 22 *to sue is in the public interest.”;*

23 *(B) by striking paragraph (3) and inserting*
 24 *the following new paragraph:*

1 “(3) *DISCRETIONARY COVENANTS.*—For settle-
2 ments under this title for which covenants under
3 paragraph (1) are not available, the President may,
4 in his discretion, provide any person with a covenant
5 not to sue concerning any liability to the United
6 States under this title, if the covenant not to sue is
7 in the public interest. Such covenants shall be subject
8 to the requirements of paragraph (5). The President
9 may include any conditions in such covenant not to
10 sue, including the additional condition referred to in
11 paragraph (5). In determining whether such a condi-
12 tion or covenant is in the public interest, the Presi-
13 dent shall consider the nature and scope of the com-
14 mitment by the settling party under the settlement,
15 the effectiveness and reliability of the response action
16 involved, the nature of the risks remaining at the fa-
17 cility involved, the strength of evidence, the likelihood
18 of cost recovery, the effectiveness and reliability of
19 any response action or actions to restore, replace, or
20 acquire the equivalent of injured, damaged, or lost
21 natural resources, the extent to which performance
22 standards are included in the settlement order or de-
23 cree, the extent to which the technology used in the re-
24 sponse action is demonstrated to be effective, and any

1 *other factors relevant to the protection of human*
2 *health and the environment.”;*

3 *(C) by striking paragraph (4);*

4 *(D) by redesignating paragraphs (5) and*
5 *(6) as paragraphs (4) and (5), respectively;*

6 *(E) in paragraph (2), by striking “reme-*
7 *dial” each place it appears and inserting “re-*
8 *sponse”; and*

9 *(F) in paragraph (5) (as so redesignated)—*

10 *(i) in subparagraph (A)—*

11 *(I) by striking “remedial” the*
12 *first place it appears and inserting*
13 *“response”;*

14 *(II) by striking “paragraph (2)”*
15 *in the first sentence and inserting*
16 *“paragraph (1) or (2)”;*

17 *(III) by striking “de minimis set-*
18 *tlements” and inserting “de minimis*
19 *and other expedited settlements pursu-*
20 *ant to subsection (g)”;* and

21 *(IV) by striking “the President*
22 *certifies under paragraph (3) that re-*
23 *medial action has been completed at*
24 *the facility concerned” and inserting*
25 *“that the response action that is the*

1 *subject of the settlement agreement is*
2 *selected”; and*

3 (ii) in subparagraph (B)—

4 (I) by striking “In extraordinary
5 circumstances, the” and inserting
6 “The”;

7 (II) by striking “those referred to
8 in paragraph (4) and”;

9 (III) by striking “if other terms,”
10 and inserting “, if the agreement con-
11 taining the covenant not to sue pro-
12 vides for payment of a premium to
13 provide sufficient contingency funding
14 for possible remedy failure or any re-
15 leases that may result from unknown
16 conditions, and if other terms,”; and

17 (IV) by adding at the end the fol-
18 lowing new sentence: “The President
19 may, in his discretion, waive or reduce
20 the premium payment for persons who
21 demonstrate an inability to pay such a
22 premium.”;

23 (6) in subsection (g)—

1 (A) by striking the subsection heading and
 2 all that follows through the end of subparagraph
 3 (A) of paragraph (1) and inserting the following:

4 “(g) *EXPEDITED FINAL SETTLEMENT.*—

5 “(1) *PARTIES ELIGIBLE FOR EXPEDITED SET-*
 6 *TLEMENT.*—The President shall, as promptly as pos-
 7 sible, offer to reach a final administrative or judicial
 8 settlement with potentially responsible parties who, in
 9 the judgment of the President, meet 1 or more of the
 10 following conditions for eligibility for an expedited
 11 settlement:

12 “(A) *DE MINIMIS CONTRIBUTION.*—The po-
 13 tentially responsible party’s individual contribu-
 14 tion of hazardous substances at the facility is de
 15 minimis. For purposes of this subparagraph, the
 16 contribution of hazardous substance to a facility
 17 by a potentially responsible party is de minimis
 18 if—

19 “(i) the potentially responsible party’s
 20 volumetric contribution of materials con-
 21 taining hazardous substances is minimal in
 22 comparison to the total volumetric contribu-
 23 tions of materials containing hazardous
 24 substances at the facility, and such individ-
 25 ual contribution is presumed to be minimal

1 *if it is 1 percent or less of the total volu-*
2 *metric contribution at the facility, unless*
3 *the Administrator identifies a different*
4 *threshold based on site-specific factors; and*

5 “(ii) the potentially responsible party’s
6 contribution of materials containing haz-
7 ardous substances does not present toxic or
8 other hazardous effects that are significantly
9 greater than those of other hazardous sub-
10 stances at the facility.”;

11 (B) by inserting after subparagraph (B) of
12 paragraph (1) the following:

13 “(C) MUNICIPAL SOLID WASTE OR SEWAGE
14 SLUDGE.—The potentially responsible party’s li-
15 ability is based on paragraph (3) or (4) of sec-
16 tion 107(a), and the arrangement for disposal,
17 treatment, or transport for disposal or treatment,
18 or the acceptance for transport for disposal or
19 treatment, involved only municipal solid waste
20 or sewage sludge. The Administrator may offer to
21 settle the liability of generators and transporters
22 of municipal solid waste or sewage sludge whose
23 liability is limited pursuant to section 107(n)(2)
24 for up to 10 percent of the total response costs
25 at the facility.

1 “(D) *ABILITY TO PAY.*—

2 “(i) *IN GENERAL.*—*The potentially re-*
3 *sponsible party is a natural person, a small*
4 *business, or a municipality and dem-*
5 *onstrates to the United States an inability*
6 *or a limited ability to pay response costs. A*
7 *party who enters into a settlement pursuant*
8 *to this subparagraph shall be deemed to*
9 *have resolved the liability of the party*
10 *under this Act to the United States with re-*
11 *spect to all matters addressed in the settle-*
12 *ment.*

13 “(ii) *SMALL BUSINESSES.*—*For pur-*
14 *poses of this subparagraph, each of the fol-*
15 *lowing provisions shall apply:*

16 “(I) *REQUEST BY SMALL BUSI-*
17 *NESS.*—*In the case of a small business,*
18 *the President shall take into consider-*
19 *ation the ability to pay of the business,*
20 *if requested by the business. The Presi-*
21 *dent shall consider the reasonable ex-*
22 *pectation of the ability of the small*
23 *business to pay its total settlement*
24 *amount and still maintain its basic*
25 *business operations. Such consideration*

1 *shall include the business's overall fi-*
2 *nancial condition and demonstrable*
3 *constraints on its ability to raise reve-*
4 *nues.*

5 “(II) *INFORMATION.*—Any busi-
6 *ness requesting such consideration shall*
7 *promptly provide the President with*
8 *all relevant information needed to de-*
9 *termine the business's ability to pay.*

10 “(III) *DEMONSTRATION.*—The
11 *business shall demonstrate the amount*
12 *of its ability to pay. If the business*
13 *employs fewer than 20 employees, and*
14 *has gross income revenues of less than*
15 *\$1,800,000 or a net profit margin of*
16 *less than 2 percent, the President shall*
17 *perform any analysis that may be re-*
18 *quired to demonstrate the business's*
19 *ability to pay. The President, in his*
20 *discretion, may perform such analysis*
21 *for any other party or require such*
22 *other party to perform the analysis.*

23 “(IV) *ALTERNATIVE PAYMENT*
24 *METHODS.*—If the President deter-
25 *mines that a small business is unable*

1 to pay its total settlement amount im-
2 mediately, the President shall consider
3 such alternative payment methods as
4 may be necessary or appropriate. The
5 methods to be considered may include
6 installment payments, to be paid dur-
7 ing a period not to exceed 10 years,
8 and the provision of in-kind services.

9 “(iii) *CONSIDERATIONS.*—For purposes
10 of this subparagraph, in the case of a mu-
11 nicipal owner or operator, the President
12 shall consider, to the extent that informa-
13 tion is provided by the municipality—

14 “(I) the general obligation bond
15 rating and information about the most
16 recent bond issue for which the rating
17 was prepared;

18 “(II) the amount of total available
19 funds (other than dedicated funds or
20 State assistance payments for remedi-
21 ation of inactive hazardous waste
22 sites);

23 “(III) the amount of total operat-
24 ing revenues (other than obligated or
25 encumbered revenues);

1 “(IV) the amount of total ex-
2 penses;

3 “(V) the amounts of total debt and
4 debt service;

5 “(VI) per capita income and cost
6 of living;

7 “(VII) real property values;

8 “(VIII) unemployment informa-
9 tion; and

10 “(IX) population information;
11 of the municipality.

12 “(iv) EVALUATION OF IMPACT.—A mu-
13 nicipality may also submit for consider-
14 ation by the President an evaluation of the
15 potential impact of the settlement on the
16 provision of municipal services, and the fea-
17 sibility of making delayed payments or
18 payments over time. If a municipality as-
19 serts that it has additional environmental
20 obligations besides its potential liability
21 under this Act, the municipality may create
22 a list of the obligations, including an esti-
23 mate of the costs of complying with such ob-
24 ligations.

1 “(v) *RISK OF DEFAULT OR VIOLA-*
2 *TION.*—A municipality may establish an
3 *inability to pay for purposes of this sub-*
4 *paragraph through an affirmative showing*
5 *that such payment of its liability under this*
6 *Act would—*

7 “(I) *create a substantial demon-*
8 *strable risk that the municipality*
9 *would default on existing debt obliga-*
10 *tions (existing as of the time of the*
11 *showing), be forced into bankruptcy, be*
12 *forced to dissolve, or be forced to make*
13 *budgetary cutbacks that would substan-*
14 *tially reduce current levels (as of the*
15 *time of the showing) of protection of*
16 *public health and safety; or*

17 “(II) *necessitate a violation of*
18 *legal requirements or limitations of*
19 *general applicability concerning the*
20 *assumption and maintenance of fiscal*
21 *municipal obligations.*

22 “(vi) *ABILITY TO PAY OF SMALL MU-*
23 *NICIPALITIES.*—Any individual municipal
24 *owner or operator with a population of less*
25 *than 100,000 persons (as measured by the*

1 1990 census of population) shall be deemed
2 to have an ability to pay an amount equal
3 to no more than 10 percent of the total re-
4 sponse costs for the facility. In any case in
5 which more than 1 municipal owner or op-
6 erator at a facility comes within the cov-
7 erage of the first sentence of this clause, the
8 10 percent limitation on ability to pay
9 shall apply to the aggregate ability to pay
10 of all such owners or operators.

11 This paragraph shall not be construed to limit or af-
12 fect the President's authority to evaluate any person's
13 ability to pay or to enter into settlements with any
14 person based on that person's inability to pay.”;

15 (C) by striking paragraphs (2) and (3) and
16 inserting the following new paragraphs:

17 “(2) BASIS OF DETERMINATION.—Any person
18 who enters into a settlement pursuant to this sub-
19 section shall provide any information requested by the
20 President or by an allocator in accordance with sec-
21 tion 129 or 104(e). Neither the determination by the
22 President as to the eligibility of a party for a settle-
23 ment pursuant to this section, nor the terms of the
24 final settlement, shall be subject to judicial review. If
25 the President determines that a party is not eligible

1 *for a settlement pursuant to this section, the basis for*
 2 *that determination shall be explained in writing to*
 3 *any person who requests such a settlement.*

4 “(3) *ADDITIONAL FACTORS RELEVANT TO SET-*
 5 *TLEMENTS WITH MUNICIPALITIES.*—*In any settlement*
 6 *with a municipality pursuant to this title, the Presi-*
 7 *dent may take additional equitable factors into ac-*
 8 *count in determining an appropriate settlement*
 9 *amount, including the limited resources available to*
 10 *that party, and any in-kind services that the party*
 11 *may provide to support the response action at the fa-*
 12 *cility. In considering the value of in-kind services, the*
 13 *President shall consider the fair market value of those*
 14 *services.”;*

15 (D) *in the second sentence of paragraph (4),*
 16 *by striking “\$500,000” and inserting*
 17 *“\$5,000,000”;*

18 (E) *by striking paragraph (5); and*

19 (F) *by redesignating paragraph (6) as*
 20 *paragraph (5); and*

21 (7) *in subsection (h)—*

22 (A) *by striking the subsection heading*
 23 *and inserting the following: “AUTHORITY TO*
 24 *SETTLE CLAIMS FOR FINES, CIVIL PENALTIES,*
 25 *PUNITIVE DAMAGES, AND COST RECOVERY.—”;*

1 (B) in paragraph (1)—

2 (i) in the first sentence, by striking
3 “costs incurred” and inserting “past and
4 future costs incurred or that may be in-
5 curred”;

6 (ii) by inserting after the first sentence
7 the following new sentences: “The head of
8 any department or agency with the author-
9 ity to seek fines, civil penalties, or punitive
10 damages under this Act may consider, com-
11 promise, and settle a claim for any such
12 fines, civil penalties, or punitive damages
13 that may otherwise be assessed in civil ad-
14 ministrative or judicial proceedings if the
15 claim has not been referred to the Depart-
16 ment of Justice for further action. If the
17 total claim for fines, civil penalties, or pu-
18 nitive damages exceeds \$300,000, such claim
19 may be compromised and settled only with
20 the prior written approval of the Attorney
21 General.”; and

22 (iii) in the last sentence, by striking
23 “\$500,000 (excluding interest), any claim
24 referred to in the preceding sentence” and
25 inserting “\$5,000,000 (excluding interest),

1 any claim for response costs referred to in
2 this subsection”;

3 (C) in paragraph (2), by striking “\$500,000
4 (excluding interest)” and inserting “\$5,000,000
5 (excluding interest)”;

6 (D) by striking paragraph (4).

7 **SEC. 409. ALLOCATION PROCEDURES.**

8 Title I (42 U.S.C. 9601 et seq.) (as amended by section
9 201) is further amended by adding at the end the following
10 new section:

11 **“SEC. 129. ALLOCATION AT MULTIPARTY FACILITIES.**

12 “(a) *SCOPE.*—

13 “(1) *POST-INTRODUCTION RODS.*—For each non-
14 federally owned facility listed on the National Prior-
15 ities List involving 2 or more potentially responsible
16 parties, for which the President selects a remedial ac-
17 tion on or after February 3, 1994, the Administrator
18 shall initiate the allocation process under this section.
19 This paragraph shall not apply to response actions
20 selected prior to such date.

21 “(2) *PRE-INTRODUCTION RODS.*—For each non-
22 federally owned facility listed on the National Prior-
23 ities List involving 2 or more potentially responsible
24 parties, for any remedial action selected by the Presi-
25 dent before February 3, 1994, the Administrator shall

1 *initiate the allocation process under this section, if re-*
2 *quested to do so by a potentially responsible party*
3 *that has resolved its liability to the United States*
4 *with respect to the remedial action or that is perform-*
5 *ing the remedial action pursuant to an order issued*
6 *under section 106(a).*

7 “(3) *OTHER FACILITIES.*—*The Administrator, if*
8 *the Administrator considers use of such process to be*
9 *appropriate, may initiate the allocation process*
10 *under this section for any facility, other than a facil-*
11 *ity referred to in paragraph (1) or (2), involving 2*
12 *or more potentially responsible parties.*

13 “(4) *EXCLUDED FACILITIES.*—*The allocation*
14 *process under this section shall not apply to any of*
15 *the following:*

16 “(A) *A facility for which there has been a*
17 *final settlement, decree, or order, that determines*
18 *all liability under this Act or allocated shares of*
19 *response costs for all potentially responsible par-*
20 *ties.*

21 “(B) *A facility for which a response action*
22 *is being carried out by a State pursuant to the*
23 *authority of this Act, unless otherwise provided*
24 *in this Act.*

1 “(C) A facility at which the Administrator
2 determines that all of the potentially responsible
3 parties are potentially liable as current or past
4 owners or operators within the meaning of sec-
5 tion 107(a)(1) or 107(a)(2), notwithstanding
6 any other basis for liability. In determining
7 whether this exclusion is applicable where an ad-
8 ministrative or judicial proceeding with respect
9 to the facility was commenced prior to February
10 3, 1994, the Administrator shall consider only
11 those potentially responsible parties who were
12 named as parties to such actions on or before
13 such date.

14 “(5) MULTIPLE REMEDIAL ACTIONS.—An alloca-
15 tion under this section shall apply to all post-Feb-
16 ruary 3, 1994, remedial actions selected for a facility
17 (but not to those remedial actions subject to para-
18 graph (2)), unless the allocator determines that the al-
19 location should address only 1 or more of such reme-
20 dial actions.

21 “(6) MULTIPLE FACILITIES.—An allocation
22 under this section may address more than 1 facility
23 where appropriate. Where appropriate, the Adminis-
24 trator may combine allocations performed pursuant

1 to this subsection for separate remedial actions at the
2 same facility, or for different facilities.

3 “(7) *EFFECT OF ALLOCATION.*—An allocation
4 pursuant to paragraph (2) or (3) shall not be con-
5 strued—

6 “(A) to require payment of an orphan share
7 pursuant to this section;

8 “(B) to require the conferral of reimburse-
9 ment rights pursuant to this section; or

10 “(C) to permit the reopening or modifica-
11 tion of any settlement or consent decree entered
12 into under this Act prior to the date of the initi-
13 ation of the allocation process.

14 “(8) *SETTLEMENT OFFERS AFTER COMMENCE-*
15 *MENT OF LITIGATION.*—The provisions of this section
16 shall not apply to any offer of settlement made after
17 expiration of the moratorium period under subsection
18 (b).

19 “(b) *MORATORIUM ON COMMENCEMENT OR CONTINU-*
20 *ATION OF SUITS.*—

21 “(1) *MORATORIUM ON COMMENCEMENT.*—No
22 person may assert any claim for response costs under
23 section 107 or commence any civil action seeking con-
24 tribution regarding or recovery of any response costs
25 in connection with a response action for which an al-

1 *location is required under paragraph (1) or (2) of*
2 *subsection (a), or for which the Administrator has*
3 *initiated an allocation process under subsection*
4 *(a)(3), until 90 days after issuance of the allocator's*
5 *report under subsection (h) or (m), whichever is later.*

6 “(2) *STAY OF EXISTING ACTIONS.*—*If a claim for*
7 *response costs under section 107 or an action seeking*
8 *recovery of response costs in connection with a re-*
9 *sponse action for which an allocation is to be per-*
10 *formed under this section is pending—*

11 “(A) *upon the date of enactment of the*
12 *Superfund Reform Act of 1994; or*

13 “(B) *upon initiation of an allocation proc-*
14 *ess;*

15 *the action or claim shall be stayed until 90 days after*
16 *the issuance of the latest allocator's report required by*
17 *this section, unless the court determines that a stay*
18 *will result in manifest injustice.*

19 “(3) *STATUTE OF LIMITATIONS.*—*Any applicable*
20 *limitations period with respect to a cause of action*
21 *subject to paragraph (1) shall be tolled from the ear-*
22 *lier of the following until 180 days after the latest*
23 *allocator's report required by this section has been is-*
24 *sued by the allocator:*

1 “(A) *The date of listing of the facility on*
 2 *the National Priorities List.*

3 “(B) *The commencement of the allocation*
 4 *process pursuant to this section.*

5 “(c) *COMMENCEMENT OF ALLOCATION.—*

6 “(1) *RESPONSIBLE PARTY SEARCH.—At all fa-*
 7 *cilities subject to this section, the Administrator shall,*
 8 *as soon as practicable, but not later than 60 days*
 9 *after the commencement of a remedial investigation,*
 10 *initiate a thorough investigation and search for all*
 11 *potentially responsible parties, using authorities of*
 12 *the Administrator under section 104. Any person may*
 13 *submit information to the Administrator concerning*
 14 *any potentially responsible party at the facility, and*
 15 *the Administrator shall consider such information in*
 16 *carrying out the responsible party search.*

17 “(2) *NOTIFICATION OF DE MINIMIS PARTIES.—As*
 18 *soon as practicable after receipt of sufficient informa-*
 19 *tion, but not later than 12 months after the com-*
 20 *mencement of the remedial investigation, the Admin-*
 21 *istrator shall take each of the following actions:*

22 “(A) *NOTIFICATION.—The Administrator*
 23 *shall notify any potentially responsible party*
 24 *who the Administrator determines is eligible for*
 25 *an expedited final settlement in accordance with*

1 *section 122(g)(1)(A) of its eligibility, based on*
2 *information available to the Administrator at*
3 *the time the determination is made.*

4 “(B) *SETTLEMENT OFFER.*—*The Adminis-*
5 *trator shall submit a written settlement offer to*
6 *each party notified under subparagraph (A) no*
7 *later than 60 days after such notification. At the*
8 *same time as the submission under the preceding*
9 *sentence, the Administrator shall make available*
10 *to the party, upon request, any nonconfidential*
11 *information on which the Administrator based*
12 *the settlement offer. If the settlement offer is*
13 *based in whole or in part on confidential infor-*
14 *mation, the Administrator shall so inform the*
15 *party.*

16 “(3) *PRELIMINARY NOTICE TO OTHER PAR-*
17 *TIES.*—*As soon as practicable after receipt of suffi-*
18 *cient information, but not later than 18 months after*
19 *the commencement of the remedial investigation, the*
20 *Administrator shall—*

21 “(A) *notify any party not previously noti-*
22 *fied under paragraph (2) who the Administrator*
23 *determines is eligible for an expedited final set-*
24 *tlement in accordance with section 122(g)(1)(A)*
25 *of its eligibility, based on information available*

1 to the Administrator at the time the determina-
2 tion is made;

3 “(B) issue a list of all potentially respon-
4 sible parties preliminarily identified by the Ad-
5 ministrator to all such parties;

6 “(C) notify the public, in accordance with
7 section 117(d), of the list of potentially respon-
8 sible parties notified or listed pursuant to sub-
9 paragraph (A) or (B), respectively; and

10 “(D) make available all responses to infor-
11 mation requests, and a preliminary list of neu-
12 tral parties whom the Administrator believes to
13 be qualified to perform an allocation with re-
14 spect to the facility (as determined in accordance
15 with the factors described in subclauses (I)
16 through (VI) of paragraph (6)(B)(ii)), or the fac-
17 tors described in paragraph (6)(B)(iii), as ap-
18 propriate, as well as other relevant information
19 concerning the facility and potentially respon-
20 sible parties, to the notified parties, except that
21 the Administrator shall not make available any
22 privileged or confidential information, unless
23 otherwise authorized by law.

24 The Administrator shall take the actions specified in
25 this paragraph within 9 months after the date of en-

1 *actment of this section for all facilities eligible for al-*
 2 *location under paragraph (1) or (2) of subsection (a)*
 3 *for which the responsible party search described in*
 4 *paragraph (1) was substantially complete prior to the*
 5 *date of the enactment of this section.*

6 “(4) *STATUS OF PARTIES.*—At the time of pro-
 7 *posing the list of potentially responsible parties under*
 8 *paragraph (3), the Administrator shall—*

9 “(A) *identify parties that are eligible for ex-*
 10 *pedited settlement pursuant to section 122(g);*

11 “(B) *identify parties who are not eligible*
 12 *for such expedited settlement; and*

13 “(C) *identify parties for which the Admin-*
 14 *istrator determines that there is insufficient in-*
 15 *formation to ascertain whether or not the parties*
 16 *are entitled to such expedited settlement.*

17 “(5) *NOMINATION OF PARTIES.*—

18 “(A) *IDENTIFICATION.*—For 60 days after
 19 *information has been made available pursuant to*
 20 *paragraph (3)(C), the parties identified by the*
 21 *Administrator in such notification and members*
 22 *of the community shall have the opportunity to*
 23 *identify and nominate additional potentially re-*
 24 *sponsible parties, to identify and nominate neu-*
 25 *tral parties whom the identified parties believe*

1 to be qualified to perform an allocation with re-
2 spect to the facility (as determined in accordance
3 with the factors described in subclauses (I)
4 through (VI) of paragraph (6)(B)(ii)), or the fac-
5 tors described in paragraph (6)(B)(iii), as ap-
6 propriate, or otherwise provide information rel-
7 evant to the facility or such potentially respon-
8 sible parties. The 60-day period may be extended
9 by the Administrator for an additional 30 days
10 upon request of any person.

11 “(B) DISCLOSURE OF INFORMATION.—Any
12 proposal for the addition of any potentially re-
13 sponsible party with respect to a facility shall be
14 supported by a statement demonstrating that
15 there is an adequate basis in law and fact to de-
16 termine that the additional nominated party is
17 potentially liable under this Act and by full dis-
18 closure to the Administrator, and simultaneously
19 to the nominated party, of all available informa-
20 tion concerning that party’s liability under this
21 Act and that party’s contribution of hazardous
22 substances to the facility. Not later than 30 days
23 after the receipt by the nominated party of the
24 information referred to in the preceding sentence,
25 the nominated party may submit to the Admin-

1 *istrator information relating to the nomination*
 2 *of the party as a potentially responsible party*
 3 *with respect to the facility.*

4 *“(6) LIST OF ALLOCATION PARTIES.—*

5 *“(A) LISTING AND IDENTIFICATION.—With-*
 6 *in 60 days after the end of the period specified*
 7 *in paragraph (5)(A) for the proposal of addi-*
 8 *tional parties, the Administrator shall—*

9 *“(i) issue a list of parties subject to the*
 10 *allocation process (referred to individually*
 11 *in this section as an ‘allocation party’);*

12 *“(ii) identify in writing, as to each of*
 13 *the proposed additional parties, which par-*
 14 *ties the Administrator has determined, in*
 15 *the Administrator’s sole discretion—*

16 *“(I) to be eligible for expedited*
 17 *settlement pursuant to section 122(g);*

18 *“(II) not to be eligible for such ex-*
 19 *pedited settlement; and*

20 *“(III) for whom insufficient infor-*
 21 *mation exists to determine whether or*
 22 *not the party is eligible for such expe-*
 23 *dited settlement; and*

24 *“(iii) identify (in writing supported*
 25 *by a brief explanation) those parties as to*

1 *which the Administrator has determined, in*
2 *the Administrator's sole discretion, that*
3 *there is an inadequate basis in law or fact*
4 *to determine that the party is potentially*
5 *liable under this Act.*

6 *For each party identified under clause (iii), the*
7 *Administrator shall, to the extent practicable,*
8 *further identify whether that party, if liable,*
9 *would be eligible for such an expedited settle-*
10 *ment. In making determinations under this sub-*
11 *paragraph, the Administrator shall consider all*
12 *available information, including any informa-*
13 *tion provided pursuant to paragraph (5)(B).*

14 “(B) *LIST OF NEUTRAL PARTIES.*—

15 “(i) *IN GENERAL.*—*At the time of issu-*
16 *ance of the list of parties provided for in*
17 *subparagraph (A)(i), the Administrator*
18 *shall provide the potentially responsible*
19 *parties who received notice under this sub-*
20 *section with a list of neutral parties who*
21 *are qualified to perform an allocation at the*
22 *facility, as determined in accordance with*
23 *clause (ii) or (iii), as appropriate. The Ad-*
24 *ministrator shall include in the list not*
25 *fewer than 5 neutral parties nominated by*

1 any allocation party on the list issued
2 under subparagraph (A)(i), except that the
3 Administrator may reject any such party
4 on the basis that the party fails to meet the
5 requirements of clause (ii). The decision of
6 the Administrator to reject such a party
7 shall be accompanied by an explanation,
8 but shall not be subject to judicial review.

9 “(ii) *QUALIFICATIONS.*—For purposes
10 of clause (i), a party shall be considered
11 qualified to perform an allocation if the Ad-
12 ministrator determines, in the sole discre-
13 tion of the Administrator, that the party—

14 “(I) is not an employee of the
15 United States;

16 “(II) has an ability to exercise
17 independent judgment;

18 “(III) has experience in the reso-
19 lution of disputes;

20 “(IV) has experience in the appli-
21 cation of this Act, the Solid Waste Dis-
22 posal Act (42 U.S.C. 6901 et seq.), or
23 another law governing the remediation
24 of hazardous substances;

1 “(V) *is otherwise professionally*
2 *qualified to perform an allocation; and*

3 “(VI) *has such other qualifica-*
4 *tions as the Administrator shall specify*
5 *in guidelines published within 60 days*
6 *after the date of enactment of this sec-*
7 *tion.*

8 “(iii) *PRIOR ALLOCATIONS.—For pur-*
9 *poses of clause (i), in determining the quali-*
10 *fications of a neutral party who has pre-*
11 *viously performed an allocation under this*
12 *Act, the Administrator shall assume that*
13 *the party is qualified if the party—*

14 “(I) *has performed any prior allo-*
15 *cation under this Act in a timely man-*
16 *ner and in accordance with this Act;*

17 “(II) *has not submitted any prior*
18 *allocator’s report under this Act that*
19 *has been rejected by the Administrator*
20 *and the Attorney General; and*

21 “(III) *meets the requirements of*
22 *clause (ii).*

23 “(C) *DE MINIMIS PARTIES.—Parties poten-*
24 *tially eligible for a settlement under section*
25 *122(g) (referred to in this section as ‘de minimis*

1 *parties’)* that the Administrator identifies as en-
 2 *titled to expedited settlement pursuant to this*
 3 *section, shall not be subject to, or assigned a*
 4 *share in, the allocation (except to the extent re-*
 5 *quired to determine the orphan share pursuant*
 6 *to subsection (h)), unless that party fails to reach*
 7 *an agreement with the President on settlement*
 8 *terms within 60 days after the offer involved is*
 9 *received.*

10 *“(D) INADEQUATE BASIS.—If the Adminis-*
 11 *trator determines that there is an inadequate*
 12 *basis in law or fact to conclude that a party is*
 13 *liable based on the information presented by the*
 14 *nominating party or otherwise available to the*
 15 *Administrator, the determination shall have the*
 16 *following effect:*

17 *“(i) EXEMPT PARTIES.—With respect*
 18 *to a party that the Administrator has deter-*
 19 *mined to be—*

20 *“(I) exempt from liability pursu-*
 21 *ant to section 107(n)(1); or*

22 *“(II) not liable on some other*
 23 *basis but who, if liable, would be eligi-*
 24 *ble for such an expedited settlement;*

1 the Administrator's determination that
2 there is an inadequate basis in law or fact
3 to conclude that party to be liable shall
4 mean that the party is not subject to, and
5 shall not be assigned a share in, the alloca-
6 tion.

7 “(ii) *OTHER PARTIES.*—With respect
8 to all other parties, the Administrator's de-
9 termination shall be accorded deference by
10 the allocator. For such parties, the allocator
11 shall consider the Administrator's deter-
12 mination together with the allocation fac-
13 tors listed in subsection (h)(2).

14 “(E) *PROHIBITION ON JUDICIAL REVIEW.*—
15 The Administrator's determinations for purposes
16 of this subsection shall not be subject to judicial
17 review, nor shall any determination or expla-
18 nation provided for purposes of an allocation be
19 admissible for any purpose in an action com-
20 menced by the United States against the party
21 that is the subject of the determination or any
22 other party.

23 “(F) *ZERO SHARE.*—The allocator may as-
24 sign a zero share to any party the allocator de-
25 termines should receive such a share in consider-

1 *ation of the allocation factors, including the Ad-*
2 *ministrator's determinations regarding parties*
3 *identified under subparagraph (C).*

4 *“(G) COSTS OF ZERO SHARE PARTY.—If a*
5 *party is assigned a zero share by the allocator,*
6 *the costs of the party of participating in the allo-*
7 *cation process (including reasonable attorney's*
8 *fees) shall be—*

9 *“(i) paid by the potentially responsible*
10 *party who initially identified and nomi-*
11 *nated the zero share party for inclusion in*
12 *the allocation process pursuant to para-*
13 *graph (5); or*

14 *“(ii) if the Administrator initially*
15 *identified the zero share party for inclusion*
16 *in the allocation process pursuant to this*
17 *subsection, funded from amounts made*
18 *available under subsection (r)(2).*

19 *“(d) DE MINIMIS SETTLEMENT OFFER.—*

20 *“(1) SETTLEMENT OFFER.—Within 30 days*
21 *after the final list of parties is issued pursuant to*
22 *paragraph (6)(A)(i) of subsection (c), the Adminis-*
23 *trator shall submit a written settlement offer to any*
24 *party identified as a potentially responsible party*
25 *pursuant to this section who the Administrator has*

1 *determined is eligible for an expedited final settlement*
2 *in accordance with section 122(g)(1)(A), and who has*
3 *not entered into a settlement with the United States*
4 *regarding the matters being addressed by the alloca-*
5 *tion. At the same time as the submission under the*
6 *preceding sentence, the Administrator shall make*
7 *available to the party, upon request, any*
8 *nonconfidential information on which the Adminis-*
9 *trator based the settlement offer and that was not pre-*
10 *viously provided to the party. If the settlement offer*
11 *is based in whole or in part on confidential informa-*
12 *tion, the Administrator shall so inform the party.*

13 “(2) *PROHIBITION ON PREMIUM.—The President*
14 *shall not include any premium in a settlement offer*
15 *made pursuant to paragraph (1) more than 60 days*
16 *after the date the offer is required to be made pursu-*
17 *ant to paragraph (1) to a party that is a small busi-*
18 *ness.*

19 “(3) *SETTLEMENT OFFERS TO SMALL BUSI-*
20 *NESSES.—If a party is a small business that the*
21 *President has determined is eligible for a settlement*
22 *pursuant to section 122(g)(1)(A), and is not offered a*
23 *settlement by the President within 120 days after the*
24 *date the offer is required to be made pursuant to*
25 *paragraph (1), the party shall have no further liabil-*

1 *ity under this Act for the costs of response actions at*
 2 *the facility for which the allocation is being per-*
 3 *formed, unless the party has failed to fully comply*
 4 *with information requests under this Act or failed to*
 5 *provide in a timely manner information to ascertain*
 6 *whether the party is entitled to such expedited settle-*
 7 *ment.*

8 “(e) *SELECTION OF ALLOCATOR.*—

9 “(1) *PROPOSAL OF ADDITIONAL CANDIDATES.*—
 10 *Any party identified by the Administrator under sub-*
 11 *section (c) may propose any person whom such party*
 12 *determines to be qualified for selection as an allocator*
 13 *in addition to those proposed from the list provided*
 14 *under subsection (c)(6)(B).*

15 “(2) *SELECTION OF ALLOCATOR BY ALLOCATION*
 16 *PARTIES.*—

17 “(A) *SELECTION.*—*The allocation parties*
 18 *shall select an allocator from the list of allocators*
 19 *proposed by the Administrator under subsection*
 20 *(c)(6)(B) or from among names proposed under*
 21 *paragraph (1) by the following voting method*
 22 *with each allocation party having a single vote:*

23 “(i) *VOTING.*—*Each allocation party,*
 24 *and the Administrator (in casting a vote on*
 25 *behalf of each of the identified but insolvent*

1 or defunct parties), shall numerically rank
2 the individuals on the final list of proposed
3 allocators, with a ranking of 1 indicating
4 first preference, and forward its vote to the
5 Administrator within 30 days after the is-
6 suanance of the final list of allocators pursu-
7 ant to subsection (c)(6)(B).

8 “(ii) DETERMINATION.—The proposed
9 allocator who receives the lowest combined
10 numerical score, taking into account all
11 votes submitted to the Administrator pursu-
12 ant to clause (i), and who agrees to serve as
13 allocator, shall be selected as the allocator.

14 “(B) VOTE BY THE ADMINISTRATOR.—The
15 Administrator may cast a vote on behalf of each
16 of the identified but insolvent or defunct parties.
17 Each allocation party shall otherwise have a sin-
18 gle vote under this paragraph.

19 “(3) PEREMPTORY STRIKE.—The Administrator
20 may reject any allocator selected by the allocation
21 parties if the proposed allocator is not on the list pro-
22 vided under paragraph (6)(B) of subsection (c).
23 Whenever the Administrator rejects a proposed allo-
24 cator under this paragraph, the Administrator shall
25 supply the reasons for such rejection to each alloca-

tion party. In the case of any such rejection the allocator shall be selected in order of lowest combined numerical score in accordance with paragraph (2).

“(4) *SELECTION OF ALLOCATOR BY ENVIRONMENTAL PROTECTION AGENCY.*—

“(A) *IN GENERAL.*—If the allocation parties do not select an allocator pursuant to paragraph (3) within 60 days after receipt of the list provided under subsection (c)(6)(B), the Administrator shall select the allocator, except as provided in subparagraph (B).

“(B) *REJECTIONS BY THE ADMINISTRATOR.*—If the Administrator rejects 4 allocators selected by the allocation parties, the Administrator shall initiate a new allocator selection process under this subsection. If the Administrator rejects 4 allocators selected by the allocation parties during the new allocator selection process, the parties shall select an allocator from the list described in subsection (c)(6)(B), or, if the parties fail to select the allocator, the Administrator shall select the allocator from the list.

“(f) *CONTRACT.*—Following selection of the allocator, the Administrator shall enter into a contract with the se-

1 *lected allocator for the provision of allocation services, and*
 2 *immediately make available all responses to information re-*
 3 *quests, as well as other relevant information, concerning the*
 4 *facility and potentially responsible parties, to the allocator.*
 5 *The Administrator has the authority to use the procurement*
 6 *procedures set forth in section 109(e) to procure the services*
 7 *of a neutral professional for use in conducting allocation*
 8 *procedures under this section, whether or not the neutral*
 9 *professional actually conducts such allocation procedures.*
 10 *Nothing in this section shall be construed to require the Ad-*
 11 *ministrator to enter into such a contract with a person who*
 12 *has previously issued an allocator's report under this sec-*
 13 *tion that has been rejected by the Administrator and Attor-*
 14 *ney General or who has failed to comply with the require-*
 15 *ments of this Act.*

16 “(g) *POTENTIALLY RESPONSIBLE PARTY SETTLE-*
 17 *MENT.*—At any time prior to the issuance of an allocator's
 18 *report as described in subsection (h), any group of poten-*
 19 *tially responsible parties may submit to the allocator a pri-*
 20 *vate allocation proposal for the remedial action at the entire*
 21 *facility or a portion of the facility. If such private alloca-*
 22 *tion proposal meets all of the following criteria, the allo-*
 23 *cator shall promptly adopt it as the allocator's report:*

24 “(1) *BINDING ALLOCATION.*—The private alloca-
 25 *tion is a binding allocation of 100 percent of the past,*

1 *present, and future recoverable costs of the remedial*
 2 *action at the entire facility or a portion of the facil-*
 3 *ity.*

4 “(2) *PROHIBITION ON ALLOCATION TO*
 5 *NONSIGNATORIES.—The private allocation does not*
 6 *allocate any share of response costs to any person who*
 7 *is not a signatory to the private allocation proposal*
 8 *or, in the case of any orphan share, unless the United*
 9 *States is a signatory to the private allocation pro-*
 10 *posal.*

11 “(3) *WAIVER.—The signatories to the private al-*
 12 *location proposal waive their contribution rights with*
 13 *respect to the remedial action at the entire facility or*
 14 *a portion of the facility against all other potentially*
 15 *responsible parties at the facility.*

16 “(h) *ALLOCATION DETERMINATION.—*

17 “(1) *SETTLEMENT AND REPORT.—Following is-*
 18 *suance of the final list of allocation parties pursuant*
 19 *to subsection (c)(6)(A)(i), the allocator shall initiate*
 20 *and conduct an allocation process that shall cul-*
 21 *minate in the issuance of a written report, with a*
 22 *nonbinding, equitable allocation of the percentage*
 23 *shares of responsibility for response costs (other than*
 24 *operation and maintenance costs assumed by a State*
 25 *pursuant to section 104(c)(11)) at the facility (re-*

1 ferred to in this section as a ‘share’) of all allocation
2 parties, including an orphan share, for the facility,
3 and provide such report to the allocation parties and
4 the Administrator. Such report shall not disclose con-
5 fidential or privileged information. The allocator
6 shall provide the report to the allocation parties and
7 the Administrator within 180 days after the issuance
8 of the list of parties pursuant to subsection
9 (c)(6)(A)(i) or the date the contract for allocation
10 services is entered into pursuant to subsection (f),
11 whichever is later. Upon request by the allocator, for
12 good cause shown by any allocation party, the Ad-
13 ministrator may grant the allocator additional time
14 to complete the allocation, not to exceed 90 days.

15 “(2) *FACTORS IN THE ALLOCATION.*—The allo-
16 cator shall prepare a nonbinding, equitable allocation
17 of shares for the facility based on each of the following
18 factors:

19 “(A) *The amount of hazardous substances*
20 *contributed by each allocation party.*

21 “(B) *The degree of toxicity of hazardous*
22 *substances contributed by each allocation party.*

23 “(C) *The mobility of hazardous substances*
24 *contributed by each allocation party.*

1 “(D) *The degree of involvement of each allo-*
2 *cation party in the generation, transportation,*
3 *treatment, storage, or disposal of the hazardous*
4 *substance.*

5 “(E) *The degree of care exercised by each al-*
6 *location party with respect to the hazardous sub-*
7 *stance, taking into account the characteristics of*
8 *the hazardous substance.*

9 “(F) *The cooperation of each allocation*
10 *party in contributing to the response action and*
11 *in providing complete and timely information*
12 *during the allocation process.*

13 “(G) *Such other factors as the Adminis-*
14 *trator determines are appropriate by published*
15 *guidance, which shall be consistent with this Act*
16 *and shall be published only after notice and op-*
17 *portunity for public comment. An alleged failure*
18 *of the allocator to consider 1 or more additional*
19 *factors set forth in such guidance shall not be*
20 *deemed to be unlawful conduct or procedural*
21 *error for purposes of paragraph (2) or (3) of sub-*
22 *section (1).*

23 “(3) *CONDUCT OF ALLOCATION PROCESS.—The*
24 *allocator shall conduct the allocation process and*
25 *render a decision based solely on the provisions of this*

1 *section, including the allocation factors specified in*
2 *paragraph (2). Each party to the allocation shall be*
3 *afforded an opportunity to be heard (either orally or*
4 *in writing, at the allocator's discretion), and an op-*
5 *portunity to comment on a draft allocator's report.*
6 *The allocator shall not be required to respond to com-*
7 *ments.*

8 “(4) IDENTIFICATION OF ORPHAN SHARES.—

9 “(A) COMPONENTS OF ORPHAN SHARE.—

10 *The allocator may determine that a share for the*
11 *facility is specifically attributable to an orphan*
12 *share. The orphan share shall consist only of*
13 *each of the following:*

14 “(i) *Shares attributable to hazardous*
15 *substances that the allocator determines, on*
16 *the basis of information presented, to be*
17 *specifically attributable to identified but in-*
18 *solvent or defunct allocation parties who are*
19 *not affiliated with any viable allocation*
20 *party.*

21 “(ii) *The difference between—*

22 “(I) *the aggregate share that the*
23 *allocator determines, on the basis of the*
24 *information presented, is specifically*
25 *attributable to allocation parties that*

1 *are contributors of municipal solid*
2 *waste or sewage sludge subject to the*
3 *limitations in section 122(g)(1)(C);*
4 *and*

5 *“(II) the share actually assumed*
6 *by those parties in any settlements*
7 *with the United States pursuant to sec-*
8 *tion 122(g), including the fair market*
9 *value of in-kind services provided by a*
10 *municipality.*

11 *“(iii) The difference between—*

12 *“(I) the aggregate share that the*
13 *allocator determines, on the basis of in-*
14 *formation presented, to be specifically*
15 *attributable to allocation parties with*
16 *a limited ability to pay response costs;*
17 *and*

18 *“(II) the share actually assumed*
19 *by those parties in any settlements*
20 *with the United States pursuant to sec-*
21 *tion 122(g).*

22 *“(iv) The costs described in subsection*
23 *(c)(6)(G) of each zero share party identified*
24 *by the Administrator, as described in sub-*
25 *section (c)(6)(G)(ii).*

1 “(v) *Shares that the allocator deter-*
2 *mines, on the basis of the information pre-*
3 *sented, are specifically attributable to par-*
4 *ties that, solely due to the application of*
5 *subsection (d)(3), have no liability under*
6 *this Act for the costs of response actions at*
7 *the facility for which the allocation is being*
8 *performed.*

9 “(B) *NOT INCLUDED IN ORPHAN SHARE.—*
10 *Shares attributable to hazardous substances that*
11 *the allocator cannot attribute to any identified*
12 *party shall be distributed among the allocation*
13 *parties, including the orphan share.*

14 “(i) *ANSWERS AND CERTIFICATIONS TO ALLOCATOR’S*
15 *INFORMATION REQUESTS.—*

16 “(1) *SUBPOENAS AND INFORMATION RE-*
17 *QUESTS.—Where necessary to assist in determining*
18 *the allocation of shares, the allocator may request in-*
19 *formation or documents from any allocation party in*
20 *accordance with paragraph (2) or (5) of section*
21 *104(e), and require by subpoena the attendance of*
22 *persons or the production of documents, or other in-*
23 *formation in accordance with section 104(e)(9). Any*
24 *allocation party to whom a request is directed shall*
25 *include in the response a certification by a respon-*

1 *sible representative or authorized representative that*
 2 *satisfies the requirement of section 104(e)(3). The al-*
 3 *locator may also request the Administrator to utilize*
 4 *the authorities of paragraph (2) and to exercise any*
 5 *information-gathering authority of the Administrator*
 6 *under this Act.*

7 “(2) *POWERS OF THE ALLOCATOR.*—*In addition*
 8 *to the information-gathering authority set forth in*
 9 *paragraph (1), the allocator shall have the author-*
 10 *ity—*

11 “(A) *to schedule meetings and require the*
 12 *attendance of allocation parties at such meetings;*

13 “(B) *to require that allocation parties wish-*
 14 *ing to present similar legal or factual positions*
 15 *consolidate their presentations;*

16 “(C) *to obtain or employ support services,*
 17 *including secretarial and clerical services, com-*
 18 *puter support services, and legal and investiga-*
 19 *tive services; and*

20 “(D) *to take any other actions necessary to*
 21 *conduct a fair, efficient, and impartial alloca-*
 22 *tion process.*

23 “(j) *CIVIL AND CRIMINAL PENALTIES.*—

24 “(1) *CIVIL PENALTIES.*—*Where the allocator is-*
 25 *sues an administrative subpoena or information or*

1 *document request pursuant to subsection (i), a party*
2 *who unreasonably fails to comply with the subpoena*
3 *or request shall be subject to a civil penalty not to ex-*
4 *ceed \$25,000 for each day of noncompliance.*

5 *“(2) ENFORCEMENT.—The allocator may seek*
6 *enforcement of an administrative subpoena or an in-*
7 *formation or document request pursuant to subsection*
8 *(i)(1), and shall seek such enforcement by requesting*
9 *that the Attorney General commence an action to en-*
10 *force the subpoena or request. The Attorney General,*
11 *within 30 days after receiving such request from the*
12 *allocator, shall—*

13 *“(A) notify the allocator that the Attorney*
14 *General will commence an action to enforce the*
15 *subpoena or information or document request;*

16 *“(B) notify the allocator that the Attorney*
17 *General will not seek enforcement of the sub-*
18 *poena or request because the subpoena or request*
19 *is barred by law or would result in annoyance,*
20 *embarrassment, oppression, or undue burden or*
21 *expense, to the party to whom it was issued; or*

22 *“(C) notify the allocator that the Attorney*
23 *General has insufficient information on which to*
24 *determine whether an enforcement action is ap-*
25 *propriate.*

1 “(3) *FAILURE OF ATTORNEY GENERAL TO RE-*
2 *SPOND.—If the Attorney General fails to provide any*
3 *response to the allocator within 30 days after a re-*
4 *quest for enforcement of the subpoena or information*
5 *or document request, the allocator may retain counsel*
6 *and commence a civil action to enforce the subpoena*
7 *or information or document request.*

8 “(4) *PENALTY.—If the Attorney General or allo-*
9 *cator prevails in an action to enforce the subpoena or*
10 *information or document request, the party who failed*
11 *to comply shall be subject to a sanction that may in-*
12 *clude civil penalties as provided in paragraph (1).*
13 *The court shall require such party to pay the reason-*
14 *able expenses, including attorney’s fees, caused by the*
15 *failure to comply, unless the court finds that the fail-*
16 *ure was substantially justified or that other cir-*
17 *cumstances make an award of expenses unjust.*

18 “(5) *CRIMINAL.—Any person who knowingly*
19 *makes any false material statement or representation*
20 *in the response to the subpoena or information or doc-*
21 *ument request issued pursuant to subsection (i) shall*
22 *be deemed to have made a false statement on a matter*
23 *within the jurisdiction of any department or agency*
24 *of the United States within the meaning of section*
25 *1001 of title 18, United States Code.*

1 “(k) *DOCUMENT REPOSITORY; CONFIDENTIALITY.*—

2 “(1) *DOCUMENT REPOSITORY.*—*The allocator*
3 *shall establish and maintain a document repository*
4 *containing copies of all documents and information—*

5 “(A) *provided by the Administrator pursu-*
6 *ant to this section;*

7 “(B) *provided or generated by the allocation*
8 *parties; or*

9 “(C) *generated by the allocator during the*
10 *allocation.*

11 *The documents and information in the document re-*
12 *pository shall be available only to the parties to the*
13 *allocation process for review and copying at their*
14 *own expense, subject to the confidentiality provisions*
15 *of paragraph (2). The Administrator shall provide to*
16 *the allocator all information obtained under section*
17 *104(e), including information entitled to protection*
18 *under section 1905 of title 18, United States Code, or*
19 *exempt from disclosure pursuant to section 552(a) of*
20 *title 5, United States Code. An allocation party shall*
21 *not assert any privilege as a basis for withholding*
22 *any information from the allocator.*

23 “(2) *CONFIDENTIALITY.*—*All documents and ma-*
24 *terials submitted to the allocator or placed in the doc-*
25 *ument repository, together with the record of any in-*

1 *formation generated or obtained during the allocation*
2 *process, shall be confidential. The allocator, each allo-*
3 *cation party, the Administrator, and the Attorney*
4 *General shall maintain such documents and mate-*
5 *rials, together with the record of any information gen-*
6 *erated or obtained during the allocation process, as*
7 *confidential and are prohibited from using any such*
8 *material in any other matter or proceeding, and the*
9 *documents, materials, and record shall not be subject*
10 *to disclosure under section 552 of title 5, United*
11 *States Code. Such material shall not be discoverable*
12 *or admissible in any other Federal, State, or local ju-*
13 *dicial, administrative, or legislative proceedings, ex-*
14 *cept—*

15 *“(A) a new allocation process pursuant to*
16 *subsection (m) or (n) for the same remedial ac-*
17 *tion or operable unit; or*

18 *“(B) an initial allocation process for a dif-*
19 *ferent remedial action or operable unit at the*
20 *same facility.*

21 *Nothing in this section shall be construed to authorize*
22 *any person, including the allocator, to withhold any*
23 *documents or information from Congress, or any duly*
24 *authorized committee thereof, or limit in any manner*
25 *the right of Congress, or any duly authorized commit-*

1 *tee thereof, to obtain such documents or information.*
2 *Any person disclosing such documents or information*
3 *to Congress shall notify the person who produced such*
4 *documents or information of the fact of such disclo-*
5 *sure.*

6 “(3) *DISCOVERABILITY AND ADMISSIBILITY.*—
7 *Notwithstanding paragraph (2), if the original of any*
8 *document or material submitted to the allocator or*
9 *placed in the document repository was, in the hands*
10 *of the party that provided it, otherwise discoverable or*
11 *admissible, then such original document, if subse-*
12 *quently sought from such party, shall remain discov-*
13 *erable or admissible. If a fact generated or obtained*
14 *during the allocation process was, in the hands of a*
15 *witness, otherwise discoverable or admissible, such*
16 *fact, if subsequently sought from such other party,*
17 *shall remain discoverable or admissible.*

18 “(4) *NO WAIVER OF PRIVILEGE.*—*The submission*
19 *of documents or information pursuant to the alloca-*
20 *tion process shall not be deemed to be a waiver of any*
21 *privilege, applicable to such documents or informa-*
22 *tion, under any Federal or State law or rule of dis-*
23 *covery or evidence.*

24 “(5) *PROCEDURE WHEN DISCOVERY IS*
25 *SOUGHT.*—*Any person, including the United States*

1 *and any Federal, State, or local agency, department,*
2 *or instrumentality, receiving any request for a state-*
3 *ment, document, or material submitted under this*
4 *title, or for the record of any allocation proceeding,*
5 *shall promptly notify the person who originally sub-*
6 *mitted such item and shall provide such submitting*
7 *person the opportunity to assert and defend the con-*
8 *fidentiality of such item. No person shall release or*
9 *provide a copy of the item to any person not a party*
10 *to such allocation, except as may be required by court*
11 *order.*

12 “(6) *CIVIL PENALTY FOR VIOLATION OF CON-*
13 *FIDENTIALITY.—Any person who fails to maintain*
14 *the confidentiality of any statement, document, or in-*
15 *formation generated or obtained during an allocation*
16 *proceeding, or who releases any such statement, docu-*
17 *ment, or information in violation of this section shall*
18 *be subject to a civil penalty of up to \$25,000 per vio-*
19 *lation. Such penalty may be sought in a civil action*
20 *initiated by the Attorney General on behalf of the*
21 *United States, or any allocation party adversely af-*
22 *ected by the failure to maintain confidentiality.*

23 “(1) *REJECTION OF ALLOCATOR’S REPORT.—The Ad-*
24 *ministrator and the Attorney General may reject an*
25 *allocator’s report if they jointly determine that—*

1 “(1) no rational interpretation of the facts before
2 the allocator, in light of the factors the allocator is re-
3 quired to consider, would form a reasonable basis for
4 the shares assigned to the allocation parties;

5 “(2) the allocation was affected by bias, fraud, or
6 unlawful conduct; or

7 “(3) the allocation was substantially and di-
8 rectly affected by procedural error.

9 The allocator’s report may not be rejected after the United
10 States has accepted a settlement offer (excluding de minimis
11 or other expedited settlements) pursuant to the allocation.
12 The Administrator and the Attorney General shall make
13 any such determination with respect to rejection of the re-
14 port within 180 days after the receipt of the first offer pur-
15 suant to the allocator’s report. The determinations of the
16 Administrator and the Attorney General under this sub-
17 section shall not be judicially reviewable. No such deter-
18 mination may be delegated to any officer or employee of
19 the Environmental Protection Agency or the Department
20 of Justice below the level of an Assistant Secretary or Acting
21 Assistant Secretary with authority for implementing this
22 Act at the Environmental Protection Agency or the Depart-
23 ment of Justice.

24 “(m) *SECOND ALLOCATION*.—If the Administrator and
25 Attorney General reject an allocator’s report, the parties

1 *shall select a new allocator pursuant to subsection (e) to*
2 *perform, on an expedited basis, a new allocation based on*
3 *the same record (but taking into account any correction for*
4 *bias, fraud, unlawful conduct, or procedural error that*
5 *served as the basis for the rejection) available to the first*
6 *allocator. The moratorium on commencement of litigation*
7 *and tolling of statutes of limitation set forth in paragraphs*
8 *(1) through (3) of subsection (b) shall be extended until 90*
9 *days after the issuance of the second allocator's report. If*
10 *the Administrator and Attorney General reject the second*
11 *allocator's report the President may, following the expira-*
12 *tion of the moratorium on commencement of litigation,*
13 *commence an action under section 107.*

14 “(n) *NEW INFORMATION.*—Any settling party, includ-
15 *ing the United States, may seek from the Administrator a*
16 *new allocation pursuant to subsection (h), where that party*
17 *presents to the Administrator clear and convincing infor-*
18 *mation or the United States otherwise determines on the*
19 *basis of clear and convincing information that—*

20 “(1) *the allocator did not have information con-*
21 *cerning 35 percent or more of the materials contain-*
22 *ing hazardous substances at the facility, and that this*
23 *information has been discovered subsequent to the is-*
24 *suance of the allocator's report; or*

1 “(2) the allocator did not have information con-
 2 cerning a person not subject to the allocation who
 3 contributed 15 percent or more of materials contain-
 4 ing hazardous substances at the facility, and that this
 5 information has been discovered subsequent to the is-
 6 suance of the allocator’s report.

7 Amendments to the allocator’s report may be made with the
 8 written consent of all the allocation parties and of the Ad-
 9 ministrators. Determinations by the United States pursuant
 10 to this subsection shall not be subject to judicial review.

11 “(o) SETTLEMENT FOLLOWING ALLOCATION.—

12 “(1) OBLIGATIONS OF THE UNITED STATES.—If,
 13 within 90 days after issuance of the latest allocator’s
 14 report required under this section, an allocation
 15 party—

16 “(A) makes a written offer to settle with re-
 17 spect to the response action involved based on the
 18 share specified by the allocator and on the addi-
 19 tional terms and conditions of settlement (other
 20 than the percentage share of liability) that are
 21 acceptable to the President; and

22 “(B) fully complied with any information
 23 requests under this Act;
 24 the President shall not seek a higher share of response
 25 costs other than the premiums authorized by this sec-

tion, unless the President has rejected the offer on a basis other than the percentage share of liability, or unless the Administrator and the Attorney General have rejected the allocator's report pursuant to subsection (l).

“(2) *EXPLANATION OF REFUSAL TO SETTLE.*—If the Administrator and the Attorney General determine not to settle on the basis of the allocation, they shall provide the allocation parties and members of the community with a written explanation of their determination.

“(3) *SETTLEMENT PROVISIONS.*—Settlements based on allocated shares shall include each of the following:

“(A) A waiver of contribution rights against all parties who are potentially responsible parties for the response action addressed by the settlement, as well as a waiver of any rights to challenge any settlement the President enters into with any other potentially responsible party regarding the response action addressed by the settlement.

“(B) Covenants not to sue, in accordance with section 122(f), and provisions regarding performance or adequate assurance of perform-

1 *ance of response actions addressed in the settle-*
2 *ment.*

3 *“(C) A premium determined on a site-spe-*
4 *cific basis and subject to the limitations set forth*
5 *in paragraph (4), that compensates for the liti-*
6 *gation risk of the United States with respect to*
7 *potentially responsible parties who have not re-*
8 *solved their liability under this Act to the United*
9 *States, except that no such premium shall apply*
10 *if all parties settle or the settlement covers 100*
11 *percent of response costs.*

12 *“(D) Contribution protection, in accordance*
13 *with section 113(f), regarding matters addressed*
14 *in the settlement, which settlement does not dis-*
15 *charge any of the other potentially responsible*
16 *parties unless its terms so provide, but reduces*
17 *the potential liability of the other parties by the*
18 *amount of the settlement.*

19 *“(E) Provisions through which the settling*
20 *parties shall receive reimbursement from the*
21 *Fund for any response costs incurred by such*
22 *parties in excess of the aggregate of their allo-*
23 *cated share and any premiums required by the*
24 *settlement, which right to reimbursement shall*
25 *not be contingent on the recovery by the United*

1 *States of response costs from any responsible per-*
2 *son not a party to any settlement with the Unit-*
3 *ed States under this Act.*

4 “(F) A commitment that the United States
5 shall pay for the orphan share, if any, backed by
6 the full faith and credit of the United States.

7 “(4) *LIMITS ON PREMIUMS.*—The premiums au-
8 thorized by paragraph (3)(C) for litigation risk shall
9 not exceed the following:

10 “(A) Five percent of the total costs assumed
11 by a settling party, where settlements (and any
12 orphan share identified by the allocator) account
13 for 80 percent or more of responsibility at the fa-
14 cility.

15 “(B) Ten percent of the total costs assumed
16 by a settling party, where settlements (and any
17 orphan share identified by the allocator) account
18 for more than 60 percent and less than 80 per-
19 cent of responsibility at the facility.

20 “(C) Fifteen percent of the total costs as-
21 sumed by a settling party, where settlements
22 (and any orphan share identified by the allo-
23 cator) account for more than 40 percent and less
24 than 60 percent of responsibility at the facility.

1 “(D) Twenty percent of the total costs as-
2 sumed by a settling party, where settlements
3 (and any orphan share identified by the allo-
4 cator) account for 40 percent or less of respon-
5 sibility at the facility.

6 The Administrator shall have authority to promulgate
7 rules to modify the premium percentages established
8 in this subsection. The Administrator may not pro-
9 pose such a rule before the date 36 months after the
10 date of enactment of this section, and no such rule
11 may take effect before the date 48 months after the
12 date of enactment of this section. Such rule shall be
13 based upon an administrative record establishing that
14 such modification is necessary to reflect actual experi-
15 ence regarding the litigation risk faced by the United
16 States in proceeding against nonsettling parties
17 under this section.

18 “(5) AUTHORIZATION OF REIMBURSEMENT.—In
19 any settlement in which a party agrees to perform re-
20 sponse work in excess of its share, the Administrator
21 shall have authority to reimburse such settling party
22 under this section pursuant to such reasonable proce-
23 dures as the Administrator may prescribe.

24 “(6) FINANCIAL CONTROLS ON REIMBURSE-
25 MENT.—The Administrator shall require all claims

1 *for reimbursement under this section to be supported*
2 *by—*

3 “(A) *documentation of actual costs in-*
4 *curring; and*

5 “(B) *sufficient information to enable the*
6 *Administrator to determine whether such costs*
7 *were reasonable, necessary, and consistent with*
8 *the national contingency plan.*

9 *The Administrator may require independent auditing*
10 *of any such claim for reimbursement and may require*
11 *other information to support such auditing by the*
12 *independent auditor.*

13 “(7) *SETTLEMENTS WITH SMALL BUSINESS PAR-*
14 *TIES.—Section 122(g)(1)(D)(ii) shall apply to a*
15 *small business allocation party that makes a written*
16 *offer to settle pursuant to paragraph (1)(A) and that*
17 *the President determines has an inability or a limited*
18 *ability to pay the allocated share of the party.*

19 “(p) *POST-SETTLEMENT LITIGATION.—*

20 “(1) *IN GENERAL.—The United States may com-*
21 *mence an action under section 107 against any per-*
22 *son liable under that section that has not resolved*
23 *such liability to the United States following an allo-*
24 *cation, on or after 90 days following issuance of the*
25 *latest allocator’s report required under this section. In*

1 *any such action, such person shall be subject to liabil-*
2 *ity in accordance with section 107 for all response*
3 *costs at the facility involved not recovered through set-*
4 *tlements with other persons. Such recoverable costs*
5 *shall include any federally funded orphan share iden-*
6 *tified in accordance with subsection (h), but shall not*
7 *include any shares allocated to Federal, State, or*
8 *local governmental agencies, departments, or instru-*
9 *mentalities because of their liability under section*
10 *107. Defendants in any such action may implead*
11 *only allocation parties who did not resolve their li-*
12 *ability under this Act to the United States. The Ad-*
13 *ministrator and the Attorney General shall issue*
14 *guidelines to ensure that the relief sought against de*
15 *minimis parties under principles of joint and several*
16 *liability will not be grossly disproportionate to their*
17 *contribution to the facility. The application of such*
18 *guidelines is committed to the discretion of the Ad-*
19 *ministrator and the Attorney General.*

20 “(2) CERTIFICATION.—*In commencing any ac-*
21 *tion under section 107 following allocation, the Attor-*
22 *ney General shall certify, in the complaint, that the*
23 *United States has been unable to reach a settlement*
24 *with the defendant that would be in the best interests*

1 *of the United States. This certification shall not be*
2 *subject to judicial review.*

3 “(3) *DEFENDANTS.*—*For response costs for which*
4 *an allocation has been completed under this section,*
5 *no person may commence an action under section 107*
6 *or otherwise seek contribution against any person who*
7 *was not identified as an allocation party pursuant to*
8 *subsection (c)(6)(A)(i) or subsequently identified as a*
9 *potentially liable party under subsection (n) (relating*
10 *to new information).*

11 “(4) *ADMISSIBILITY OF ALLOCATOR’S REPORT.*—
12 *The allocator’s report shall not be admissible in any*
13 *court for any purpose, except as set forth in this sec-*
14 *tion. The allocator’s report, subject to the rules and*
15 *discretion of the court, may be admissible solely for*
16 *the purpose of assisting the court in making an equi-*
17 *table allocation of response costs among the relative*
18 *shares of nonsettling liable parties.*

19 “(5) *COSTS OF ALLOCATION PROCEDURE.*—

20 “(A) *INCLUDED AS COSTS OF RESPONSE.*—

21 *The costs of implementing the allocation process*
22 *set forth in this section, including reasonable fees*
23 *and expenses of the allocator, shall be considered*
24 *necessary costs of response for purposes of this*
25 *Act.*

1 “(B) *ORPHAN SHARE*.—The amount of or-
2 phan shares identified by the allocator pursuant
3 to subsection (e)(4) shall be considered necessary
4 costs of response for purposes of this Act, and
5 shall be recoverable from liable parties who do
6 not resolve their liability under this Act on the
7 basis of the allocation.

8 “(6) *REJECTION OF SHARE DETERMINATION*.—
9 In any action by the United States under this title,
10 if the United States has rejected an offer of settlement
11 that is consistent with subsection (o)(1)(A) and that
12 was presented to the United States prior to the com-
13 mencement of the action, the offeror shall be entitled
14 to recover from the United States the offeror’s reason-
15 able costs of defending the action after the making of
16 the offer (including reasonable attorneys’ fees) if the
17 ultimate resolution of liability or allocation of costs
18 with respect to the offeror (taking into account all set-
19 tlements and reimbursements with respect to the facil-
20 ity other than those attributable to insurance or in-
21 demnification), is as, or more, favorable to the offeror
22 than the offer based on the allocation involved.

23 “(q) *REIMBURSEMENT FOR UNILATERAL ADMINISTRA-*
24 *TIVE ORDER PERFORMANCE*.—

1 “(1) *REIMBURSEMENT.*—Parties who satisfac-
2 torily perform work under an administrative order
3 issued under section 106(a) with respect to a remedial
4 action for which an allocation is required by sub-
5 section (a)(1), shall be entitled to reimbursement for
6 the reasonable and necessary costs of work they per-
7 form that is consistent with the national contingency
8 plan and is in excess of the share assigned to them
9 in the allocation in accordance with the provisions of
10 this section, if the allocator’s report is not rejected by
11 the United States and, at the end of the moratorium
12 following the allocation, the performing party, in con-
13 sideration of such reimbursement—

14 “(A) agrees not to contest liability for all
15 response costs not inconsistent with the national
16 contingency plan to the extent of the allocated
17 share;

18 “(B) receives no covenant not to sue;

19 “(C) agrees that its reimbursement shall be
20 reduced by an amount equal to the maximum
21 litigation risk premium provided for in sub-
22 section (o)(4) based on the total allocated shares
23 of the allocation parties who have not reached
24 settlements with the United States by the end of

1 *the moratorium on commencement of actions*
2 *provided in subsection (b); and*

3 *“(D) waives contribution rights against all*
4 *parties who are potentially responsible parties*
5 *for the remedial action, as well as waives any*
6 *rights to challenge any settlement the President*
7 *enters into with any other such potentially re-*
8 *sponsible party.*

9 *“(2) OFFSET.—Any and all reimbursement pro-*
10 *vided to such a performing party for such work in ex-*
11 *cess of its share is subject to equitable offset or reduc-*
12 *tion by the Administrator upon a finding of a failure*
13 *to perform any aspect of the remedy in a proper and*
14 *timely manner.*

15 *“(3) TIME OF PAYMENT.—Any and all reim-*
16 *bursement to such a performing party for such work*
17 *in excess of its share shall be paid after the work is*
18 *completed, but no sooner than completion of the con-*
19 *struction of the remedial action.*

20 *“(4) LIMIT ON ORPHAN SHARE FUNDING.—The*
21 *amount of orphan share funding available to the per-*
22 *forming party shall be further limited as follows:*

23 *“(A) WAIVER OF RIGHT TO CHALLENGE.—*
24 *A performing party who fully waives the right to*
25 *challenge remedy selection at the end of the mor-*

1 *atorium following allocation shall be entitled to*
2 *full reimbursement of reasonable and necessary*
3 *costs incurred consistent with the national con-*
4 *tingency plan in excess of the party's share and*
5 *attributable by the allocator to the orphan share*
6 *paid in nominal dollars after the work is com-*
7 *pleted, but no sooner than completion of the con-*
8 *struction of the remedial action.*

9 *“(B) RETENTION OF RIGHT TO CHAL-*
10 *LENCE.—A performing party who retains the*
11 *right to challenge the remedy shall be reimbursed*
12 *for reasonable and necessary costs incurred con-*
13 *sistent with the national contingency plan that*
14 *represent 90 percent of orphan share funding,*
15 *paid in nominal dollars after the work is com-*
16 *pleted, but no sooner than completion of the con-*
17 *struction of the remedial action, unless the or-*
18 *phan share is less than 20 percent of responsibil-*
19 *ity at the site, in which case such parties shall*
20 *be reimbursed only 80 percent of the orphan*
21 *share.*

22 *For purposes of this subsection, the term ‘nominal*
23 *dollars’ means actual dollars spent by the performing*
24 *party, without increase for interest or inflation.*

1 “(5) *INTEREST.*—*Reimbursement for reasonable*
2 *and necessary costs incurred consistent with the na-*
3 *tional contingency plan in excess of the performing*
4 *party’s allocated share but that is not attributable to*
5 *the orphan share shall be paid in nominal dollars*
6 *after the work is completed, but no sooner than com-*
7 *pletion of the construction of the remedial action, and*
8 *the performing party is entitled to all interest (pre-*
9 *judgment and postjudgment, whether recovered from a*
10 *party or earned in a site account) that has accrued*
11 *on money recovered by the United States from other*
12 *parties for such work at the time construction of the*
13 *remedy is completed.*

14 “(6) *FINANCIAL CONTROLS ON REIMBURSE-*
15 *MENT.*—*The Administrator shall require that all*
16 *claims for such reimbursement be supported by—*

17 “(A) *documentation of actual costs in-*
18 *curred; and*

19 “(B) *sufficient information to enable the*
20 *Administrator to determine whether such costs*
21 *were reasonable, necessary, and incurred consist-*
22 *ent with the national contingency plan.*

23 *The Administrator may require independent auditing*
24 *of any such claim for reimbursement and may require*

1 *other information to support such auditing by the*
2 *independent auditor.*

3 “(r) *FUNDING OF ORPHAN SHARES.*—

4 “(1) *LIMITATION ON OBLIGATIONS.*—For each
5 *settlement agreement entered into pursuant to sub-*
6 *section (o) that includes an orphan share, the United*
7 *States shall reimburse the allocation parties, includ-*
8 *ing any Federal agency, for costs incurred and equi-*
9 *tably attributable to the orphan share. In no case*
10 *shall the United States enter into obligations for any*
11 *fiscal year for the sum of the costs, and interest deter-*
12 *mined under paragraph (3), totalling in excess of*
13 *\$300,000,000, plus any remaining unobligated bal-*
14 *ance of funds made available under paragraph (2)*
15 *from any previous fiscal year. In no case shall the*
16 *total obligations for the costs and the interest exceed*
17 *\$1,500,000,000 for the period beginning October 1,*
18 *1994, and ending September 30, 1999.*

19 “(2) *LIMITATION ON APPROPRIATIONS.*—Appro-
20 *priations shall be made available to the President*
21 *from the Fund in an amount not to exceed*
22 *\$300,000,000 for fiscal year 1996 and for each fiscal*
23 *year thereafter for the payments required by para-*
24 *graph (1), to remain available until expended.*

1 “(3) *REIMBURSEMENT DELAYS.*—Notwithstanding
2 *section 1341 of title 31, United States Code, any*
3 *sums found to be due and owing under paragraph (1)*
4 *in excess of amounts appropriated for a fiscal year*
5 *for agreements described in such paragraph shall be*
6 *paid from amounts made available under paragraph*
7 *(2) for subsequent fiscal years. Such payments shall*
8 *include interest on the unpaid balance of the sums at*
9 *a rate equal to the rate of interest on 1-year Treasury*
10 *bills.*

11 “(4) *TERMS AND CONDITIONS.*—Reimbursements
12 *made under this subsection shall be subject to such*
13 *terms and conditions as the President may prescribe.*

14 “(s) *PROCEDURES.*—The Administrator, after con-
15 *sultation with the Attorney General, may promulgate rules*
16 *(or guidance) of Environmental Protection Agency organi-*
17 *zation, procedure, and practices but shall not have addi-*
18 *tional authority, except as specifically set forth in this sec-*
19 *tion, to promulgate rules or publish guidance to restrict the*
20 *allocator’s discretion in the conduct of the allocation.*

21 “(t) *ROLE OF FEDERAL AGENCIES.*—Federal depart-
22 *ments, agencies, or instrumentalities, or their agents, that*
23 *are identified as potentially responsible parties under this*
24 *Act shall be subject to, and be entitled to the benefits of,*

1 *the allocation process provided by this section to the same*
2 *extent as any other party.*

3 “(u) *REPRESENTATION OF THE UNITED STATES AND*
4 *OF A STATE.—The Administrator and the Attorney Gen-*
5 *eral, and a State that is exercising authority delegated*
6 *under section 127, with respect to the facility that is the*
7 *subject of the allocation process shall be entitled to review*
8 *all documents related to, and participate in any phase of,*
9 *the allocation process.*

10 “(v) *ANNUAL REPORT.—The President shall report an-*
11 *nually to Congress on the administration of the allocation*
12 *scheme under this section, and provide information com-*
13 *paring the allocation results with actual settlements at*
14 *multiparty facilities.*

15 “(w) *SAVINGS PROVISIONS.—Nothing in this section*
16 *shall in any way limit or affect the President’s authority*
17 *to exercise the powers conferred by section 103, 104, 105,*
18 *106, or 122, to commence an action against a party where*
19 *there is a contemporaneous filing of a judicial consent de-*
20 *cree resolving that party’s liability, or to file a proof of*
21 *claim or take other action in a proceeding under title 11,*
22 *United States Code. The procedures established in this sec-*
23 *tion shall not be construed to modify or affect in any way*
24 *the principles of retroactive, strict, joint and several liabil-*

1 *ity under this title. Nothing in this section shall limit or*
2 *affect—*

3 “(1) *the Administrator’s obligation to perform*
4 *an allocation for facilities that have been the subject*
5 *of partial or expedited settlements;*

6 “(2) *the ability of a potentially responsible party*
7 *at a facility to resolve its liability under this Act to*
8 *the United States or other parties at any time before*
9 *initiation or completion of the allocation process;*

10 “(3) *the validity, enforceability, finality, or mer-*
11 *its of any judicial or administrative order, judgment,*
12 *or decree that is issued, signed, lodged, or entered*
13 *with respect to liability under this Act or that author-*
14 *izes modification of any such order, judgment, or de-*
15 *cree; or*

16 “(4) *the validity, enforceability, finality, or mer-*
17 *its of any preexisting (as of the date of enactment of*
18 *this section) contract or agreement relating to any al-*
19 *location of responsibility or any sharing of response*
20 *costs under this Act.*

21 “(x) *RESPONSE ACTION CONTRACTOR.—Notwithstand-*
22 *ing any provision of this section, any liability of a response*
23 *action contractor under this Act shall be determined in ac-*
24 *cordance with section 119, to the extent such liability arises*

1 *from a person's activities as a response action contractor*
2 *at a facility."*

3 **SEC. 410. CLARIFICATION OF LIABILITY FOR RECYCLING**
4 **TRANSACTIONS.**

5 (a) *PURPOSES.*—*The purposes of this section and the*
6 *amendments made by this section are—*

7 (1) *to promote the reuse and recycling of scrap*
8 *material in furtherance of the goals of waste mini-*
9 *mization and natural resource conservation while*
10 *protecting human health and the environment;*

11 (2) *to level the playing field between the use of*
12 *virgin materials and recycled materials; and*

13 (3) *to remove the disincentives and impediments*
14 *to recycling because of potential Superfund liability.*

15 (b) *CLARIFICATION OF LIABILITY UNDER THE COM-*
16 *PREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,*
17 *AND LIABILITY ACT OF 1980 FOR RECYCLING TRANS-*
18 *ACTIONS.*—*Title I (42 U.S.C. 9601 et seq.) (as amended by*
19 *sections 201 and 409) is further amended by adding at the*
20 *end the following new section:*

21 **"SEC. 130. RECYCLING TRANSACTIONS.**

22 "(a) *LIABILITY CLARIFICATION.*—*As provided in sub-*
23 *sections (b), (c), (d), and (e), a person who arranged for*
24 *the recycling of recyclable material shall not be liable under*

1 paragraph (3) or (4) of section 107(a) with respect to the
2 material.

3 “(b) *RECYCLABLE MATERIAL DEFINED.*—For pur-
4 poses of this section, the term ‘recyclable material’ means
5 scrap paper, scrap plastic, scrap glass, scrap textiles, scrap
6 rubber, scrap metal, and spent lead-acid batteries, spent
7 nickel-cadmium batteries, and other spent batteries, as well
8 as minor amounts of material incident to or adhering to
9 the scrap material as a result of its normal and customary
10 use prior to becoming scrap material.

11 “(c) *TRANSACTIONS INVOLVING SCRAP PAPER, PLAS-*
12 *TIC, GLASS, TEXTILES, OR RUBBER.*—For purposes of this
13 section, a transaction involving scrap paper, scrap plastic,
14 scrap glass, scrap textiles, or scrap rubber shall be consid-
15 ered to be arranging for the recycling of recyclable material
16 if the person who arranged for the transaction (by selling
17 recyclable material or otherwise arranging for the recycling
18 of recyclable material) can demonstrate by a preponderance
19 of the evidence that all of the following criteria were met
20 at the time of the transaction:

21 “(1) *GRADE.*—The recyclable material met a
22 commercial specification grade.

23 “(2) *MARKET.*—A market existed for the recyc-la-
24 ble material.

1 “(3) *FEEDSTOCK*.—A substantial portion of the
2 recyclable material was made available for use as a
3 feedstock for the manufacture of a new saleable prod-
4 uct.

5 “(4) *REPLACEMENT OR SUBSTITUTE*.—The recy-
6 clable material could have been a replacement or sub-
7 stitute for a virgin raw material, or the product to
8 be made from the recyclable material could have been
9 a replacement or substitute for a product made, in
10 whole or in part, from a virgin raw material.

11 “(5) *CONSUMING FACILITY*.—In the case of a
12 transaction occurring 90 days or more after the date
13 of enactment of this section, the person exercised rea-
14 sonable care to determine that the facility where the
15 recyclable material would be handled, processed, re-
16 claimed, or otherwise managed by another person (re-
17 ferred to in this section as a ‘consuming facility’) was
18 in compliance with substantive (not procedural or ad-
19 ministrative) provisions of each Federal, State, or
20 local environmental law or regulation, or compliance
21 order or decree issued pursuant thereto, applicable to
22 the handling, processing, reclamation, storage, or
23 other management activities associated with the recy-
24 clable material. For purposes of this paragraph, ‘rea-

1 *sonable care' shall be determined using criteria that*
2 *include—*

3 *“(A) the price paid in the recycling trans-*
4 *action;*

5 *“(B) the ability of the person to detect the*
6 *nature of the consuming facility's operations*
7 *concerning its handling, processing, reclamation,*
8 *storage, or other management activities associ-*
9 *ated with the recyclable material; and*

10 *“(C) the result of inquiries made to the ap-*
11 *propriate Federal, State, or local environmental*
12 *agency (or agencies) regarding the consuming fa-*
13 *cility's past and current compliance with sub-*
14 *stantive (not procedural or administrative) pro-*
15 *visions of any Federal, State, or local environ-*
16 *mental law or regulation, or compliance order or*
17 *decree issued pursuant thereto, applicable to the*
18 *handling, processing, reclamation, storage, or*
19 *other management activities associated with the*
20 *recyclable material.*

21 *For the purposes of this paragraph, a requirement to*
22 *obtain a permit applicable to the handling, process-*
23 *ing, reclamation, storage, or other management activ-*
24 *ity associated with the recyclable materials shall be*
25 *considered to be a substantive provision.*

1 “(d) *TRANSACTIONS INVOLVING SCRAP METAL.*—

2 “(1) *ARRANGING FOR THE RECYCLING OF RECY-*
3 *CLABLE MATERIAL.*—*For purposes of this section, a*
4 *transaction involving scrap metal shall be considered*
5 *to be arranging for the recycling of recyclable mate-*
6 *rial if the person who arranged for the transaction*
7 *(by selling recyclable material or otherwise arranging*
8 *for the recycling of recyclable material) can dem-*
9 *onstrate by a preponderance of the evidence that at*
10 *the time of the transaction—*

11 “(A) *the person met the criteria set forth in*
12 *subsection (c) with respect to the scrap metal;*

13 “(B) *the person was in compliance with the*
14 *applicable regulations or standards regarding*
15 *the storage, transport, management, or other ac-*
16 *tivities associated with the recycling of scrap*
17 *metal that the Administrator promulgates under*
18 *the Solid Waste Disposal Act (42 U.S.C. 6901 et*
19 *seq.) subsequent to the date of enactment of this*
20 *section and with regard to transactions occur-*
21 *ring after the effective date of such regulations or*
22 *standards; and*

23 “(C) *the person did not melt the scrap*
24 *metal prior to the transaction.*

1 “(2) *MELT*.—For purposes of paragraph (1)(C),
 2 the term ‘melt’, used with respect to scrap metal, does
 3 not include the thermal separation of 2 or more mate-
 4 rials due to differences in their melting points (re-
 5 ferred to as ‘sweating’).

6 “(3) *SCRAP METAL*.—For purposes of this sub-
 7 section, the term ‘scrap metal’ means bits and pieces
 8 of metal parts (such as bars, turnings, rods, sheets,
 9 and wire) or metal pieces that may be combined to-
 10 gether with bolts or soldering (such as radiators,
 11 scrap automobiles, and railroad boxcars) that when
 12 worn or superfluous can be recycled, except for—

13 “(A) scrap metals that the Administrator
 14 excludes from this definition by regulation; and

15 “(B) steel shipping containers of capacities
 16 of not less than 30 liters and not more than 3000
 17 liters, whether intact or not, having any hazard-
 18 ous substances (but not metal bits or pieces) con-
 19 tained in or adhering thereto.

20 “(e) *TRANSACTIONS INVOLVING BATTERIES*.—For pur-
 21 poses of this section, a transaction involving spent lead-acid
 22 batteries, spent nickel-cadmium batteries, or other spent
 23 batteries shall be considered to be arranging for the recy-
 24 cling of recyclable material if the person who arranged for
 25 the transaction (by selling recyclable material or otherwise

1 *arranging for the recycling of recyclable material) dem-*
2 *onstrates by a preponderance of the evidence that at the*
3 *time of the transaction—*

4 “(1) *the person met the criteria set forth in sub-*
5 *section (c) with respect to the spent lead-acid bat-*
6 *teries, spent nickel-cadmium batteries, or other spent*
7 *batteries but did not recover the valuable components*
8 *of such batteries; and*

9 “(2)(A) *with respect to a transaction involving*
10 *lead-acid batteries, the person was in compliance with*
11 *applicable Federal environmental regulations or*
12 *standards regarding the storage, transport, manage-*
13 *ment, or other activities associated with the recycling*
14 *of spent lead-acid batteries;*

15 “(B) *with respect to transactions involving nick-*
16 *el-cadmium batteries, Federal environmental regula-*
17 *tions or standards are in effect regarding the storage,*
18 *transport, management, or other activities associated*
19 *with the recycling of spent nickel-cadmium batteries,*
20 *and the person was in compliance with such regula-*
21 *tions or standards that are applicable; or*

22 “(C) *with respect to transactions involving other*
23 *spent batteries, Federal environmental regulations or*
24 *standards are in effect regarding the storage, trans-*
25 *port, management, or other activities associated with*

1 *the recycling of such batteries, and the person was in*
2 *compliance with such regulations or standards that*
3 *are applicable.*

4 “(f) *EXCLUSIONS.*—

5 “(1) *IN GENERAL.*—*The exemptions set forth in*
6 *subsections (c), (d), and (e) shall not apply if—*

7 “(A) *the person had an objectively reason-*
8 *able basis to believe at the time of the recycling*
9 *transaction—*

10 “(i) *that the recyclable material would*
11 *not be recycled;*

12 “(ii) *that the recyclable material would*
13 *be burned as fuel, or for energy recovery or*
14 *incineration; or*

15 “(iii) *for transactions occurring dur-*
16 *ing the 90-day period beginning on the date*
17 *of enactment of this section, that the con-*
18 *suming facility was not in compliance with*
19 *a substantive (not a procedural or adminis-*
20 *trative) provision of any Federal, State, or*
21 *local environmental law or regulation, or*
22 *compliance order or decree issued pursuant*
23 *thereto, applicable to the handling, process-*
24 *ing, reclamation, storage, or other manage-*

1 *ment activities associated with the recycla-*
2 *ble material;*

3 *“(B) the person added hazardous substances*
4 *into the recyclable material for purposes other*
5 *than processing for recycling; or*

6 *“(C) the person failed to exercise reasonable*
7 *care with respect to the management and han-*
8 *dling of the recyclable material.*

9 *“(2) BASIS FOR BELIEF.—For purposes of this*
10 *subsection, an objectively reasonable basis for belief*
11 *shall be determined using criteria that includes the*
12 *size of the person’s business, customary industry prac-*
13 *tices, the price paid in the recycling transaction, and*
14 *the ability of the person to detect the nature of the*
15 *consuming facility’s operations concerning its han-*
16 *dling, processing, reclamation, storage, or other man-*
17 *agement activities associated with the recyclable ma-*
18 *terial.*

19 *“(3) REQUIREMENT.—For purposes of this sub-*
20 *section, a requirement to obtain a permit applicable*
21 *to the handling, processing, reclamation, storage, or*
22 *other management activities associated with recycla-*
23 *ble material shall be considered to be a substantive*
24 *provision.*

1 “(g) *EFFECT ON OTHER LIABILITY.*—Nothing in this
2 section shall be considered to affect the liability of a person
3 under paragraph (1) or (2) of section 107(a).

4 “(h) *POLYCHLORINATED BIPHENYLS.*—An exemption
5 under this section shall not apply if the recyclable material
6 contained polychlorinated biphenyls in excess of 50 parts
7 per million or any new standard promulgated after the date
8 of enactment of this section pursuant to applicable Federal
9 laws.

10 “(i) *REGULATIONS.*—The Administrator shall have the
11 authority, under section 115, to promulgate additional reg-
12 ulations concerning this section.

13 “(j) *EFFECT ON PENDING OR CONCLUDED ACTIONS.*—
14 The exemptions provided in this section for a party shall
15 not affect any judicial or administrative action that is con-
16 cluded with respect to the party prior to February 3, 1994,
17 or any pending (as of the date of enactment of this section)
18 judicial action initiated prior to February 3, 1994. The ex-
19 emptions provided in this section shall not be available with
20 respect to a facility if a potentially responsible party whose
21 liability at the facility based on paragraph (3) or (4) of
22 section 107(a) has resolved the liability with the United
23 States prior to February 3, 1994.

24 “(k) *LIABILITY FOR ATTORNEY’S FEES FOR CERTAIN*
25 *ACTIONS.*—Any person who commences an action in con-

1 *tribution against a person who is not liable by operation*
 2 *of this section shall be liable to that person for all reasonable*
 3 *costs of defending that action, including all reasonable at-*
 4 *torney's and expert witness fees.*

5 *“(l) RELATIONSHIP TO LIABILITY UNDER OTHER*
 6 *LAWS.—Nothing in this section shall affect—*

7 *“(1) liability under any other Federal, State, or*
 8 *local statute or regulation promulgated pursuant to*
 9 *any such statute, including any requirements promul-*
 10 *gated by the Administrator under the Solid Waste*
 11 *Disposal Act (42 U.S.C. 6901 et seq.); or*

12 *“(2) the ability of the Administrator to promul-*
 13 *gate regulations under any other statute, including*
 14 *the Solid Waste Disposal Act.”.*

15 **SEC. 411. LENDER AND FIDUCIARY LIABILITY.**

16 *(a) CERCLA AMENDMENT.—Title I (42 U.S.C. 9601*
 17 *et seq.) (as amended by sections 201, 409, and 410(b)) is*
 18 *further amended by adding at the end the following new*
 19 *sections:*

20 **“SEC. 131. INSURED DEPOSITORY INSTITUTION AND OTHER**
 21 **LENDER LIABILITY.**

22 *“(a) LIABILITY LIMITATIONS.—The liability of an in-*
 23 *sured depository institution or other lender that is liable*
 24 *under any other provision of this Act for the release or*

1 *threatened release of a hazardous substance at, from, or in*
2 *connection with property—*

3 “(1) *acquired through foreclosure;*

4 “(2) *subject to a security interest held by such*
5 *institution or lender;*

6 “(3) *held by a lessor pursuant to the terms of an*
7 *extension of credit; or*

8 “(4) *subject to financial control or financial*
9 *oversight pursuant to the terms of an extension of*
10 *credit;*

11 *shall be limited to the actual benefit conferred on such insti-*
12 *tution or lender by a removal, remedial, or other response*
13 *action undertaken by another party.*

14 “(b) *ACTUAL BENEFIT.—For purposes of this section,*
15 *the actual benefit conferred on an institution or lender by*
16 *a removal, remedial, or other response action shall be equal*
17 *to the net gain, if any, realized by such institution or lender*
18 *due to such action. For purposes of this subsection, the ‘net*
19 *gain’ shall not exceed the amount realized by the institution*
20 *or lender on the sale of property less acquisition, holding,*
21 *and disposition costs.*

22 “(c) *EXCLUSION.—Notwithstanding subsection (a), but*
23 *subject to the provisions of section 107(d), a depository in-*
24 *stitution or lender that caused or contributed to the release*

1 *of a hazardous substance may be liable for a response action*
2 *pertaining to that release.*

3 “(d) *ENVIRONMENTAL ASSESSMENTS.*—

4 “(1) *DEPOSITORY INSTITUTIONS.*—*The Adminis-*
5 *trator, in consultation with the Secretary of the*
6 *Treasury, shall issue and publish guidelines for in-*
7 *sured depository institutions and other lenders to de-*
8 *velop and implement adequate procedures to evaluate*
9 *actual and potential environmental risks that may*
10 *arise from or at property prior to making an exten-*
11 *sion of credit secured by such property. The require-*
12 *ments may provide for exclusions or different types of*
13 *environmental assessments as may be appropriate*
14 *under the circumstances in order to account for the*
15 *levels of risk that may be posed by different classes of*
16 *collateral. Each Federal agency having the authority*
17 *under Federal law to make an examination of an in-*
18 *sured depository institution shall take compliance*
19 *with the guidelines into account in performing such*
20 *examinations.*

21 “(2) *FINAL GUIDELINES.*—*Final guidelines re-*
22 *quired to be issued pursuant to paragraph (1) shall*
23 *be issued not later than 180 days after the date of en-*
24 *actment of this section.*

1 “(e) *DEFINITIONS.*—For purposes of this section, the
2 *following definitions shall apply:*

3 “(1) *PROPERTY ACQUIRED THROUGH FORE-*
4 *CLOSURE.*—

5 “(A) *IN GENERAL.*—The term ‘property ac-
6 *quired through foreclosure’ means property ac-*
7 *quired, or the act of acquiring property, from a*
8 *nonaffiliated party by an insured depository in-*
9 *stitution or other lender—*

10 “(i) *through purchase at sales under*
11 *judgment or decree, power of sales,*
12 *nonjudicial foreclosure sales, or from a*
13 *trustee, deed in lieu of foreclosure, or simi-*
14 *lar conveyance, or through repossession, if*
15 *such property was security for an extension*
16 *of credit previously contracted;*

17 “(ii) *through conveyance pursuant to*
18 *an extension of credit previously contracted,*
19 *including the termination of a lease agree-*
20 *ment; or*

21 “(iii) *through any other formal or in-*
22 *formal manner by which the insured deposi-*
23 *tory institution or other lender temporarily*
24 *acquires, for subsequent disposition, posses-*

1 *sion of collateral in order to protect its in-*
2 *terest.*

3 “(B) *EXCLUSION.*—*Property is not acquired*
4 *through foreclosure if the insured depository in-*
5 *stitution or lender does not seek to sell or other-*
6 *wise divest such property at the earliest prac-*
7 *tical, commercially reasonable time, on commer-*
8 *cially reasonable terms, taking into account*
9 *market conditions and legal and regulatory re-*
10 *quirements.*

11 “(2) *LENDER.*—*The term ‘lender’ means—*

12 “(A) *a person (other than an insured depos-*
13 *itory institution) that—*

14 “(i) *makes a bona fide extension of*
15 *credit to or takes a security interest from a*
16 *nonaffiliated party; and*

17 “(ii) *substantially and materially com-*
18 *plies with the environmental assessment re-*
19 *quirements imposed under subsection (d),*
20 *after final guidelines under that subsection*
21 *have been issued;*

22 *and includes a successor or assign of any such*
23 *person;*

24 “(B) *the Federal National Mortgage Asso-*
25 *ciation, the Federal Home Loan Mortgage Cor-*

1 *poration, the Federal Agricultural Mortgage Cor-*
2 *poration, or other entity that in a bona fide*
3 *manner is engaged in the business of buying or*
4 *selling loans or interests therein, if such Associa-*
5 *tion, Corporation, or entity requires institutions*
6 *from which it purchases loans (or other obliga-*
7 *tions) to comply substantially and materially*
8 *with the requirements of subsection (d), after*
9 *final guidelines under that subsection have been*
10 *issued;*

11 *“(C) any person engaged in the business of*
12 *insuring or guaranteeing against a default in*
13 *the repayment of an extension of credit, or act-*
14 *ing as a surety with respect to an extension of*
15 *credit, to nonaffiliated parties; and*

16 *“(D) any person regularly engaged in the*
17 *business of providing title insurance who ac-*
18 *quires the property as a result of assignment or*
19 *conveyance in the course of underwriting claims*
20 *and claims settlement.*

21 *“(3) EXTENSION OF CREDIT.—The term ‘exten-*
22 *sion of credit’ includes a lease finance transaction—*

23 *“(A) in which the lessor does not initially*
24 *select the leased property and does not during the*

1 *lease term control the daily operations or main-*
2 *tenance of the property; or*

3 *“(B) that conforms with regulations issued*
4 *by the appropriate Federal banking agency (as*
5 *defined in section 3 of the Federal Deposit Insur-*
6 *ance Act (12 U.S.C. 1813)) or the appropriate*
7 *State banking regulatory authority.*

8 *“(4) INSURED DEPOSITORY INSTITUTION.—The*
9 *term ‘insured depository institution’ has the same*
10 *meaning as in section 3(c) of the Federal Deposit In-*
11 *surance Act (12 U.S.C. 1813(c)), and shall also in-*
12 *clude—*

13 *“(A) an insured credit union, as defined in*
14 *section 101 of the Federal Credit Union Act (12*
15 *U.S.C. 1752);*

16 *“(B) a bank or association chartered under*
17 *the Farm Credit Act of 1971 (12 U.S.C. 2001 et*
18 *seq.); and*

19 *“(C) a leasing or trust company that is an*
20 *affiliate of an insured depository institution (as*
21 *such term is defined in this paragraph).*

22 *“(5) SECURITY INTEREST.—The term ‘security*
23 *interest’ includes rights under a mortgage, deed of*
24 *trust, assignment, judgment lien, pledge, security*
25 *agreement, factoring agreement, lease, or any other*

1 *right accruing to a person to secure the repayment of*
2 *money, the performance of a duty, or some other obli-*
3 *gation.*

4 “(f) *SAVINGS CLAUSE.*—*Nothing in this section*
5 *shall—*

6 “(1) *affect the rights or immunities or other de-*
7 *fenses that are available under this Act or other ap-*
8 *plicable law to any party subject to the provisions of*
9 *this section;*

10 “(2) *be construed to create any liability for any*
11 *party; or*

12 “(3) *create a private right of action against an*
13 *insured depository institution or lender or against*
14 *any Federal agency that regulates an insured deposi-*
15 *tory institution or other lender.*

16 **“SEC. 132. LIABILITY OF FIDUCIARIES.**

17 “(a) *IN GENERAL.*—*The liability of a fiduciary that*
18 *is liable under any other provision of this Act for the release*
19 *or threatened release of a hazardous substance at, from, or*
20 *in connection with property held in a fiduciary capacity,*
21 *may not exceed the assets held in such fiduciary capacity*
22 *that are available to indemnify the fiduciary.*

23 “(b) *EXCLUSION.*—*Subsection (a) does not apply to the*
24 *extent that a person is liable under this Act independent*

1 *of such person's ownership or actions taken in a fiduciary*
2 *capacity.*

3 “(c) *LIMITATION.*—Notwithstanding subsections (a)
4 *and (d), a fiduciary whose failure to exercise due care*
5 *caused or contributed to the release of a hazardous substance*
6 *may have liability in its personal capacity for a response*
7 *action pertaining to that release.*

8 “(d) *SAFE HARBOR.*—A fiduciary shall not be liable
9 *in its personal capacity under this Act for—*

10 “(1) *undertaking or directing another to under-*
11 *take a response action under section 107(d)(1) or*
12 *under the direction of an on-scene coordinator;*

13 “(2) *undertaking or directing another to*
14 *undertake any other lawful means of addressing haz-*
15 *ardous substances in connection with the property;*

16 “(3) *terminating the fiduciary relationship;*

17 “(4) *including in the terms of the fiduciary*
18 *agreement covenants, warranties, or other terms and*
19 *conditions that relate to compliance with environ-*
20 *mental laws, or monitoring or enforcing such terms;*

21 “(5) *monitoring or undertaking 1 or more in-*
22 *spections of the property;*

23 “(6) *providing financial or other advice or coun-*
24 *seling to other parties to the fiduciary relationship,*
25 *including the settler or beneficiary;*

1 “(7) restructuring, renegotiating, or otherwise al-
 2 tering the terms and conditions of the fiduciary rela-
 3 tionship; or

4 “(8) declining to take any of the actions de-
 5 scribed in paragraphs (2) through (7).

6 “(e) *DEFINITIONS.*—For purposes of this section, the
 7 following definitions shall apply:

8 “(1) *FIDUCIARY.*—The term ‘fiduciary’—

9 “(A) means a person acting for the benefit
 10 of another party as a bona fide—

11 “(i) trustee;

12 “(ii) executor;

13 “(iii) administrator;

14 “(iv) custodian;

15 “(v) guardian of estates or guardian
 16 *ad litem*;

17 “(vi) receiver;

18 “(vii) conservator;

19 “(viii) committee of estates of lunatics
 20 or other disabled persons;

21 “(ix) personal representative; or

22 “(x) representative in any other capac-
 23 ity that the Administrator, pursuant to
 24 public notice, determines to be similar to
 25 those listed in clauses (i) through (ix); and

1 “(B) does not include any person who is
2 acting as a fiduciary with respect to a trust or
3 other fiduciary estate that—

4 “(i) was not created as part of, or to
5 facilitate, 1 or more estate plans or pursu-
6 ant to the incapacity of a natural person;
7 and

8 “(ii) was organized for the primary
9 purpose of, or is engaged in, actively carry-
10 ing on a trade or business for profit.

11 “(2) FIDUCIARY CAPACITY.—A person acts in a
12 ‘fiduciary capacity’ with respect to property if the
13 person holds title to such property, or otherwise has
14 control of or an interest in such property, pursuant
15 to the exercise of such person’s responsibilities as a fi-
16 duciary.

17 “(3) FEDERAL BANKING OR LENDING AGENCY.—
18 The term ‘Federal banking or lending agency’ has the
19 same meaning as in section 44 of the Federal Deposit
20 Insurance Act.

21 “(f) SAVINGS CLAUSE.—Nothing in this section shall
22 affect the rights or immunities or other defenses that are
23 available under this Act or other applicable law to any per-
24 son subject to the provisions of this section. Nothing in this
25 section shall create any liability for any party. Nothing in

1 *this section shall create a private right of action against*
 2 *a fiduciary or any other party.*

3 “(g) *INAPPLICABILITY TO FEDERAL BANKING AND*
 4 *LENDING AGENCIES.*—*Nothing in this section shall be con-*
 5 *strued to apply to a Federal banking or lending agency.*

6 “(h) *NO EFFECT ON CERTAIN PERSONS.*—*Nothing in*
 7 *this section shall be construed to affect the liability, if any,*
 8 *of a person who—*

9 “(1)(A) *acts in a capacity other than a fiduciary*
 10 *capacity; and*

11 “(B) *directly or indirectly benefits from a trust*
 12 *or fiduciary relationship; or*

13 “(2) *who—*

14 “(A) *is a beneficiary and a fiduciary with*
 15 *respect to the same fiduciary estate; and*

16 “(B) *as a fiduciary, receives benefits that*
 17 *exceed customary or reasonable compensation,*
 18 *and incidental benefits, permitted under other*
 19 *applicable law.*

20 “(i) *REGULATORY AUTHORITY.*—*The Administrator*
 21 *may promulgate regulations to implement this section.”.*

22 (b) *FEDERAL DEPOSIT INSURANCE ACT AMEND-*
 23 *MENT.*—*The Federal Deposit Insurance Act (12 U.S.C.*
 24 *1811 et seq.) is amended by adding at the end the following*
 25 *new section:*

1 **“SEC. 44. FEDERAL BANKING AND LENDING AGENCY LI-**
2 **ABILITY.**

3 “(a) *GOVERNMENTAL ENTITIES.*—

4 “(1) *BANKING AND LENDING AGENCIES.*—Except
5 as provided in paragraph (3), a Federal banking or
6 lending agency shall not be liable under any law im-
7 posing strict liability for the release or threatened re-
8 lease of a hazardous substance at or from property
9 (including any right or interest therein) acquired—

10 “(A) in connection with the exercise of re-
11 ceivership or conservatorship authority, or the
12 liquidation or winding up of the affairs of an
13 insured depository institution, including any of
14 its subsidiaries;

15 “(B) in connection with the provision of
16 loans, discounts, advances, guarantees, insurance
17 or other financial assistance; or

18 “(C) in connection with property received
19 in any civil or criminal proceeding, or adminis-
20 trative enforcement action, whether by settlement
21 or order.

22 “(2) *APPLICATION OF STATE LAW.*—Nothing in
23 this section shall be construed as preempting, affect-
24 ing, applying to, or modifying any State law, or any
25 rights, actions, cause of action, or obligations under
26 State law, except that liability under State law shall

1 *not exceed the value of the agency's interest in the*
2 *asset giving rise to such liability. Nothing in this sec-*
3 *tion shall be construed to prevent a Federal banking*
4 *or lending agency from agreeing with a State to*
5 *transfer property to such State in lieu of any liability*
6 *that might otherwise be imposed under State law.*

7 “(3) *LIMITATION.*—Notwithstanding paragraph
8 (1), and subject to section 107(d) of the *Comprehen-*
9 *sive Environmental Response, Compensation, and Li-*
10 *ability Act of 1980, a Federal banking or lending*
11 *agency that caused or contributed to the release of a*
12 *hazardous substance may be liable for removal, reme-*
13 *dial, or other response action pertaining to that re-*
14 *lease.*

15 “(4) *SUBSEQUENT PURCHASER.*—The immunity
16 *provided by paragraph (1) shall extend to the first*
17 *subsequent purchaser of property described in such*
18 *paragraph from a Federal banking or lending agency,*
19 *unless such purchaser—*

20 “(A) *would otherwise be liable or poten-*
21 *tially liable for all or part of the costs of the re-*
22 *moval, remedial, or other response action due to*
23 *a prior relationship with the property;*

24 “(B) *is or was affiliated with or related to*
25 *a party described in subparagraph (A);*

1 “(C) fails to agree to take reasonable steps
2 necessary to remedy the release or threatened re-
3 lease or to protect public health and safety in a
4 manner consistent with the purposes of applica-
5 ble environmental laws; or

6 “(D) causes or contributes to any additional
7 release or threatened release on the property.

8 “(5) *FEDERAL OR STATE ACTION.*—Notwith-
9 standing paragraph (4), if a Federal agency or State
10 environmental agency is required to take remedial ac-
11 tion due to the failure of a subsequent purchaser to
12 carry out, in good faith, the agreement described in
13 paragraph (4)(C), such subsequent purchaser shall re-
14 imburse the Federal or State environmental agency
15 for the costs of such remedial action. Any such reim-
16 bursement shall not exceed the increase in the fair
17 market value of the property attributable to the reme-
18 dial action.

19 “(b) *LIEN EXEMPTION.*—Notwithstanding any other
20 provision of law, any property held by a subsequent pur-
21 chaser referred to in subsection (a)(4) or held by a Federal
22 banking or lending agency shall not be subject to any lien
23 for costs or damages associated with the release or threat-
24 ened release of a hazardous substance existing at the time
25 of the transfer.

1 “(c) *EXEMPTION FROM COVENANTS TO REMEDIATE.*—
 2 *A Federal banking or lending agency shall be exempt from*
 3 *any law requiring such agency to grant covenants warrant-*
 4 *ing that a removal, remedial, or other response action has*
 5 *been, or will in the future be, taken with respect to property*
 6 *acquired in the manner described in subsection (a)(1).*

7 “(d) *DEFINITIONS.*—*For purposes of this section, the*
 8 *following definitions shall apply:*

9 “(1) *FEDERAL BANKING OR LENDING AGENCY.*—
 10 *The term ‘Federal banking or lending agency’ means*
 11 *the Corporation, the Resolution Trust Corporation,*
 12 *the Board of Governors of the Federal Reserve System,*
 13 *the Comptroller of the Currency, the Office of Thrift*
 14 *Supervision, a Federal Reserve Bank, a Federal*
 15 *Home Loan Bank, the Department of Housing and*
 16 *Urban Development, the National Credit Union Ad-*
 17 *ministration Board, the Farm Credit Administration,*
 18 *the Farm Credit System Insurance Corporation, the*
 19 *Farm Credit System Assistance Board, the Farmers*
 20 *Home Administration, the Rural Electrification Ad-*
 21 *ministration, the Small Business Administration,*
 22 *and any other Federal agency acting in a similar ca-*
 23 *capacity, in any of their capacities, and their agents or*
 24 *appointees.*

1 “(2) *HAZARDOUS SUBSTANCE*.—The term ‘haz-
 2 ardous substance’ has the same meaning as in section
 3 101(14) of the Comprehensive Environmental Re-
 4 sponse, Compensation, and Liability Act of 1980.

5 “(3) *RELEASE*.—The term ‘release’ has the same
 6 meaning as in section 101(22) of the Comprehensive
 7 Environmental Response, Compensation, and Liabil-
 8 ity Act of 1980, and includes the use, storage, dis-
 9 posal, treatment, generation, or transportation of a
 10 hazardous substance.

11 “(e) *SAVINGS CLAUSE*.—Nothing in this section
 12 shall—

13 “(1) affect the rights or immunities or other de-
 14 fenses that are available under this Act or other ap-
 15 plicable law to any party, subject to the provisions of
 16 this section;

17 “(2) be construed to create any liability for any
 18 party; or

19 “(3) create a private right of action against an
 20 insured depository institution or lender or against a
 21 Federal banking or lending agency.”.

22 (c) *DEFINITION OF PARTICIPATION IN MANAGE-*
 23 *MENT*.—Section 101(20) (42 U.S.C. 9601(20)) (as amended
 24 by section 605(a)(3)(C)) is further amended—

1 (1) *in subparagraph (A), by striking the second*
2 *sentence; and*

3 (2) *by adding at the end the following:*

4 “(F) *EXCLUSION OF PERSONS NOT PARTICI-*
5 *PANTS IN MANAGEMENT.—*

6 “(i) *INDICIA OF OWNERSHIP TO PRO-*
7 *TECT SECURITY INTEREST.—The term*
8 *‘owner or operator’ does not include a per-*
9 *son who, without participating in the man-*
10 *agement of a vessel or facility, holds indicia*
11 *of ownership primarily to protect such*
12 *persons’s security interest in the vessel or*
13 *facility.*

14 “(ii) *NONPARTICIPATION IN MANAGE-*
15 *MENT PRIOR TO FORECLOSURE.—The term*
16 *‘owner or operator’ does not include a per-*
17 *son who did not participate in management*
18 *of a vessel or facility prior to foreclosure,*
19 *even if such person forecloses on such vessel*
20 *or facility, sells, re-leases (in the case of a*
21 *lease finance transaction), or liquidates the*
22 *vessel or facility, maintains business activi-*
23 *ties, winds up operations, or undertakes*
24 *any response action under section 107(d)(1)*
25 *or under the direction of an on-scene coordi-*

1 nator, with respect to the vessel or facility,
2 or takes other measures to preserve, protect,
3 or prepare the vessel or facility prior to sale
4 or disposition, if such person seeks to sell,
5 re-lease (in the case of a lease finance trans-
6 action), or otherwise divest such vessel or fa-
7 cility at the earliest practical, commercially
8 reasonable time, on commercially reasonable
9 terms, taking into account market condi-
10 tions and legal and regulatory require-
11 ments.

12 “(G) *PARTICIPATION IN MANAGEMENT.*—
13 For purposes of subparagraph (F)—

14 “(i) the term ‘participate in manage-
15 ment’ means actually participating in the
16 management or operational affairs of the
17 vessel or facility, and does not include mere-
18 ly having the capacity to influence, or the
19 unexercised right to control, vessel or facil-
20 ity operations;

21 “(ii) a person shall be considered to
22 ‘participate in management’ while the bor-
23 rower is still in possession of the vessel or
24 facility encumbered by the security interest
25 only if such person—

1 “(I) exercises decisionmaking con-
2 trol over the environmental compliance
3 of a borrower, such that the person has
4 undertaken responsibility for the haz-
5 ardous substance handling or disposal
6 practices of the borrower; or

7 “(II) exercises control at a level
8 comparable to that of a manager of the
9 enterprise of the borrower, such that
10 the person has assumed or manifested
11 responsibility for the overall manage-
12 ment of the enterprise encompassing
13 day-to-day decisionmaking with re-
14 spect to environmental compliance, or
15 with respect to substantially all of the
16 operational aspects (as distinguished
17 from financial or administrative as-
18 pects) of the enterprise, other than en-
19 vironmental compliance;

20 “(iii) the term ‘participate in manage-
21 ment’ does not include conducting an act or
22 failing to act prior to the time that a secu-
23 rity interest is created in a vessel or facil-
24 ity; and

1 “(iv) the term ‘participate in manage-
2 ment’ does not include—

3 “(I) holding such a security inter-
4 est or abandoning or releasing such a
5 security interest;

6 “(II) including in the terms of an
7 extension of credit, or in a contract or
8 security agreement relating to such an
9 extension, covenants, warranties, or
10 other terms and conditions that relate
11 to environmental compliance;

12 “(III) monitoring or enforcing the
13 terms and conditions of the extension
14 of credit or security interest;

15 “(IV) monitoring or undertaking
16 1 or more inspections of the vessel or
17 facility;

18 “(V) requiring or conducting re-
19 sponse action or other lawful means of
20 addressing the release or threatened re-
21 lease of a hazardous substance in con-
22 nection with the vessel or facility prior
23 to, during, or upon the expiration of
24 the term of the extension of credit;

1 “(VI) *providing financial or other*
2 *advice or counseling in an effort to*
3 *mitigate, prevent, or cure default or*
4 *diminution in the value of the vessel or*
5 *facility;*

6 “(VII) *restructuring, re-*
7 *negotiating, or otherwise agreeing to*
8 *alter the terms and conditions of the*
9 *extension of credit or security interest,*
10 *exercising forbearance; or*

11 “(VIII) *exercising other remedies*
12 *that may be available under applicable*
13 *law for the breach of any term or con-*
14 *dition of the extension of credit or se-*
15 *curity agreement;*

16 *if such actions do not rise to the level of*
17 *participating in management, as defined in*
18 *clauses (i) and (ii).*

19 “(H) *OTHER TERMS.—As used in subpara-*
20 *graph (F), subparagraph (G), and this subpara-*
21 *graph, the following definitions shall apply:*

22 “(i) *EXTENSION OF CREDIT.—The term*
23 *‘extension of credit’ includes a lease finance*
24 *transaction—*

1 “(I) in which the lessor does not
2 initially select the leased vessel or facil-
3 ity and does not during the lease term
4 control the daily operations or mainte-
5 nance of the vessel or facility; or

6 “(II) that conforms with regula-
7 tions issued by the appropriate Federal
8 banking agency or the appropriate
9 State bank supervisor (as those terms
10 are defined in section 3 of the Federal
11 Deposit Insurance Act (12 U.S.C.
12 1813)) or with regulations issued by
13 the National Credit Union Adminis-
14 tration Board, as appropriate.

15 “(ii) *FINANCIAL OR ADMINISTRATIVE*
16 *ASPECT.*—The term ‘financial or adminis-
17 trative aspect’ includes a function such as a
18 function of a credit manager, accounts pay-
19 able officer, accounts receivable officer, per-
20 sonnel manager, comptroller, or chief finan-
21 cial officer, or any similar function.

22 “(iii) *FORECLOSURE; FORECLOSE.*—
23 The terms ‘foreclosure’ and ‘foreclose’ mean,
24 respectively, acquiring, and to acquire, a
25 vessel or facility through—

1 “(I) purchase at sale under a
2 judgment or decree, a power of sale, a
3 nonjudicial foreclosure sale, or from a
4 trustee, deed in lieu of foreclosure, or
5 similar conveyance, or through repos-
6 session, if such vessel or facility was se-
7 curity for an extension of credit pre-
8 viously contracted;

9 “(II) conveyance pursuant to an
10 extension of credit previously con-
11 tracted, including the termination of a
12 lease agreement; or

13 “(III) any other formal or infor-
14 mal manner by which the person ac-
15 quires, for subsequent disposition, pos-
16 session of collateral in order to protect
17 the security interest of the person.

18 “(iv) *OPERATIONAL ASPECT*.—The
19 term ‘operational aspect’ includes a func-
20 tion such as a function of a facility or
21 plant manager, operations manager, chief
22 operating officer, or chief executive officer.

23 “(v) *SECURITY INTEREST*.—The term
24 ‘security interest’ includes a right under a
25 mortgage, deed of trust, assignment, judg-

1 *ment lien, pledge, security agreement, fac-*
 2 *toring agreement, or lease, or any other*
 3 *right accruing to a person to secure the re-*
 4 *payment of money, the performance of a*
 5 *duty, or some other obligation.”.*

6 (d) *EFFECTIVE DATE.*—*The amendments made by this*
 7 *section shall be applicable with respect to any claim that*
 8 *has not been finally adjudicated as of the date of enactment*
 9 *of this Act.*

10 ***SEC. 412. RELIGIOUS, CHARITABLE, SCIENTIFIC, OR EDU-***
 11 ***CATIONAL ORGANIZATIONS.***

12 (a) *DEFINITION.*—*Section 101(20) (42 U.S.C.*
 13 *9601(20)) (as amended by section 411(c)) is further amend-*
 14 *ed by adding at the end the following:*

15 “(I) *RELIGIOUS, CHARITABLE, SCIENTIFIC,*
 16 *OR EDUCATIONAL ORGANIZATION.*—*Subject to*
 17 *section 107(p), the term ‘owner or operator’ in-*
 18 *cludes an organization described in section*
 19 *501(c)(3) of the Internal Revenue Code of 1986,*
 20 *that is organized and operated exclusively for re-*
 21 *ligious, charitable, scientific, or educational pur-*
 22 *poses, and that holds title to a vessel or facil-*
 23 *ity.”.*

1 (b) *LIMITATION ON LIABILITY.*—Section 107 (42
 2 *U.S.C. 9607)* (as amended by section 403(b)) is further
 3 amended by adding at the end the following:

4 “(p) *RELIGIOUS, CHARITABLE, SCIENTIFIC, OR EDU-*
 5 *CATIONAL ORGANIZATION.*—

6 “(1) *LIMITATION ON LIABILITY.*—In the event
 7 that an organization described in section 101(20)(I)
 8 holds title to a vessel or facility, either directly or in
 9 trust, as a result of a charitable gift that is allowable
 10 as a deduction under section 170, 2055, or 2522 of the
 11 Internal Revenue Code of 1986 (determined without
 12 regard to dollar limitations), the liability of the orga-
 13 nization shall be limited to the lesser of the fair mar-
 14 ket value of the vessel or facility or the actual pro-
 15 ceeds of the sale of the vessel or facility received by
 16 the organization, subject to paragraph (2).

17 “(2) *CONDITIONS.*—In order for an organization
 18 described in section 101(20)(I) to be eligible for the
 19 limited liability described in paragraph (1), the orga-
 20 nization shall—

21 “(A) provide full cooperation, assistance,
 22 and facility access to persons authorized to con-
 23 duct response actions at the vessel or facility, in-
 24 cluding the cooperation and access necessary for
 25 the installation, preservation of integrity, oper-

1 *ation, and maintenance of any complete or par-*
 2 *tial response action at the vessel or facility;*

3 *“(B) provide full cooperation and assistance*
 4 *to the United States in identifying and locating*
 5 *persons who recently owned, operated, or other-*
 6 *wise controlled activities at the vessel or facility;*

7 *“(C) establish by a preponderance of the*
 8 *evidence that all active disposal of hazardous*
 9 *substances at the facility or vessel occurred before*
 10 *the organization acquired the vessel or facility;*
 11 *and*

12 *“(D) establish by a preponderance of the*
 13 *evidence that the organization did not cause or*
 14 *contribute to a release or threatened release of*
 15 *hazardous substances at the vessel or facility.*

16 *“(3) LIMITATION.—Nothing in this subsection*
 17 *shall affect the liability of any person, other than a*
 18 *person described in section 101(20)(I) who meets the*
 19 *conditions specified in paragraph (2).”.*

20 **SEC. 413. WORKING GROUP.**

21 *(a) DEFINITIONS.—As used in this section:*

22 *(1) ADMINISTRATOR; RESPONSE.—The terms*
 23 *“Administrator” and “response” have the meanings*
 24 *given the terms in paragraphs (2) and (25), respec-*
 25 *tively, of section 101 of the Comprehensive Environ-*

1 *mental Response, Compensation, and Liability Act of*
2 *1980 (42 U.S.C. 9601).*

3 (2) *RESPONSE ACTION CONTRACTOR.*—*The term*
4 *“response action contractor” means a contractor de-*
5 *scribed in section 119(a)(1) of such Act (42 U.S.C.*
6 *9619(a)(1)).*

7 (b) *ESTABLISHMENT.*—*The Administrator shall estab-*
8 *lish a working group, which shall include representatives*
9 *of response action contractor organizations as well as inter-*
10 *ested government departments and agencies.*

11 (c) *STUDY AND REPORT.*—

12 (1) *STUDY.*—*The working group shall study the*
13 *potential liability of response action contractors*
14 *under such Act and the potential impact of the liabil-*
15 *ity on the cost and effectiveness of response actions.*
16 *The group shall examine potential risks to govern-*
17 *ment and private sector entities involved in such re-*
18 *sponse actions.*

19 (2) *REPORT.*—*The working group shall prepare*
20 *a report that includes the findings from the study de-*
21 *scribed in paragraph (1). The report shall contain*
22 *recommended measures to address the potential risks.*
23 *The working group shall submit the report to Con-*
24 *gress not later than 120 days after the date of enact-*
25 *ment of this Act.*

1 **SEC. 414. INDIRECT COSTS.**

2 Title I (as amended by sections 201(a), 409, 410(b),
3 and 411(a)) (42 U.S.C. 9601 et seq.) is further amended
4 by adding at the end the following new section:

5 **“SEC. 133. INDIRECT COSTS.**

6 “(a) *DEFINITION.*—As used in this section:

7 “(1) *INDIRECT COST EXPENDITURE.*—The term
8 ‘indirect cost expenditure’, used with respect to a fis-
9 cal year, means a disbursement from the Fund by the
10 President for the operation, management, or imple-
11 mentation of activities under this Act for the fiscal
12 year that is not directly attributable to the activities
13 of the President for a particular facility at which re-
14 sponse actions have been, are, or are planned to be
15 taken.

16 “(2) *TOTAL COST EXPENDITURES.*—The term
17 ‘total cost expenditures’, used with respect to a fiscal
18 year, means the total amount of the disbursements
19 from the Fund by the President for the operation,
20 management, or implementation of activities under
21 this Act for the fiscal year.

22 “(b) *RULE.*—Beginning with fiscal year 1995, the per-
23 centage of total cost expenditures that represents indirect
24 cost expenditures shall not exceed 35 percent.

25 “(c) *CALCULATION.*—Not later than December 1 of fis-
26 cal year 1997 and of each subsequent fiscal year, the Presi-

1 *dent shall calculate for the preceding fiscal year the percent-*
 2 *age of total cost expenditures that represents indirect cost*
 3 *expenditures.*

4 “(d) *REDUCTION OF CLAIMS.*—For any fiscal year for
 5 *which indirect cost expenditures exceed 35 percent of total*
 6 *cost expenditures, the excess indirect cost expenditures shall*
 7 *not be considered to be response costs that are recoverable*
 8 *under this Act.*

9 “(e) *REPORT BY COMPTROLLER GENERAL.*—Not later
 10 *than 3 years after the date of enactment of this section, the*
 11 *Comptroller General shall commence a review of indirect*
 12 *cost expenditures for the period of 3 fiscal years imme-*
 13 *diately preceding the date on which the Comptroller General*
 14 *commences the review. Not later than 4 years after the date*
 15 *of enactment of this section, the Comptroller General shall*
 16 *submit a report to the Committee on Environment and*
 17 *Public Works of the Senate, containing the results of the*
 18 *review and recommendations as to the appropriate aggre-*
 19 *gate annual amount of indirect cost expenditures.”.*

20 **SEC. 415. RELEASE OF EVIDENCE.**

21 (a) *TIMELY ACCESS TO INFORMATION FURNISHED*
 22 *UNDER SECTION 104(e).*—Section 104(e)(8)(A) (as amend-
 23 *ed by section 401(d)) is further amended by inserting after*
 24 *“shall be made available to the public” the following: “not*

1 *later than 14 days after the records, reports, documents, or*
 2 *information are obtained”.*

3 *(b) REQUIREMENT TO PROVIDE PRPs EVIDENCE OF*
 4 *LIABILITY.—*

5 *(1) ABATEMENT ORDERS.—Section 106(a) (42*
 6 *U.S.C. 9606(a)) (as amended by section 402(a)) is*
 7 *further amended by adding at the end the following:*
 8 *“In any case in which the President issues an order*
 9 *to a person under this subsection, the President shall*
 10 *provide information concerning the evidence that in-*
 11 *dicates that each element of liability contained in sec-*
 12 *tion 107(a) is present with respect to the person.”.*

13 *(2) NOTICE OF PERIOD OF NEGOTIATION.—Sec-*
 14 *tion 122(e)(1) (42 U.S.C. 9622(e)(1)) is amended by*
 15 *inserting after subparagraph (C) the following:*

16 *“(D) For each potentially responsible party,*
 17 *information concerning the evidence that indi-*
 18 *cates that each element of liability contained in*
 19 *section 107(a) is present.”.*

20 **SEC. 416. CONTIGUOUS OR NEARBY PROPERTIES.**

21 *Section 107(n) (as added by section 403(a)(2) and*
 22 *amended by subsections (a)(2) and (d)(1) of section 404)*
 23 *(42 U.S.C. 9607(n)) is further amended by adding at the*
 24 *end the following new paragraph:*

1 “(5) *CONTIGUOUS PROPERTIES*.—A person who
2 owns or operates real property that is contiguous to
3 or otherwise similarly situated with respect to real
4 property on which there has been a release or threat-
5 ened release of a hazardous substance and that is or
6 may be contaminated by such release shall not be con-
7 sidered to be an owner or operator of a facility under
8 subsection (a)(1) solely by reason of such contamina-
9 tion, if such person establishes by a preponderance of
10 the evidence that—

11 “(A) such person exercised due care with re-
12 spect to the hazardous substance, in light of all
13 relevant facts and circumstances;

14 “(B) such person took precautions against
15 any foreseeable act or omission that resulted in
16 the release or threatened release and the con-
17 sequences that could foreseeably result from such
18 act or omission; and

19 “(C) such person did not cause or contribute
20 to the release or threatened release.

21 The President may issue an assurance of no enforce-
22 ment action under this Act to any such person and
23 may grant any such person protection against cost re-
24 covery and contribution actions pursuant to section
25 113(f)(2).”.

1 **TITLE V—REMEDY SELECTION**
 2 **AND CLEANUP STANDARDS**

3 **SEC. 501. CLEANUP STANDARDS.**

4 (a) *IN GENERAL.*—Section 121(d) (42 U.S.C. 9621(d))
 5 *is amended—*

6 (1) *in paragraph (2)(C)—*

7 (A) *by striking clause (iv);*

8 (B) *in clause (iii)—*

9 (i) *by striking “(iii)” and inserting*
 10 *“(B)”;*

11 (ii) *by striking “clause (ii)” and in-*
 12 *serting “subparagraph (A)”;* and

13 (iii) *by redesignating subclauses (I),*
 14 *(II), and (III) as clauses (i), (ii), and (iii),*
 15 *respectively; and*

16 (C) *in clause (ii)—*

17 (i) *by striking “(ii)” and inserting*
 18 *“(9)(A)”;* and

19 (ii) *by striking “clauses (iii) and (iv)”*
 20 *and inserting “subparagraph (B)”;*

21 (2) *in paragraph (3), by inserting “, or 4010(c)*
 22 *if appropriate,” after “3005”;*

23 (3) *by redesignating paragraph (3) as para-*
 24 *graph (10);*

25 (4) *by striking paragraph (4); and*

1 (5) *by striking the subsection heading and all*
2 *that follows through the end of clause (i) of paragraph*
3 *(2)(C) and inserting the following:*

4 “(d) *ESTABLISHMENT OF PROTECTIVE CONCENTRA-*
5 *TION LEVELS.—*

6 “(1) *NATIONAL GOAL.—*

7 “(A) *IN GENERAL.—The goal of this Act is*
8 *to protect human health and the environment. In*
9 *order to provide consistent and equivalent pro-*
10 *tection of human health, the goal of protection of*
11 *human health shall be expressed as a single nu-*
12 *merical health risk level that ensures a reason-*
13 *able certainty of no harm from exposure to car-*
14 *cinogens and a single numerical health risk level*
15 *that ensures a reasonable certainty of no harm*
16 *from exposure to noncarcinogens, and shall pro-*
17 *vide the basis for protective concentration levels*
18 *established under this subsection. The Adminis-*
19 *trator shall propose a regulation specifying the*
20 *health risk levels not later than 12 months after*
21 *the date of enactment of the Superfund Reform*
22 *Act of 1994 and shall promulgate the regulation*
23 *not later than 18 months after such date.*

24 “(B) *EXCEPTION.—If the President finds*
25 *that achievement of the goal is technically infea-*

1 *sible or unreasonably costly, the President may*
2 *select a protective concentration level or take a*
3 *remedial action that does not achieve the goal.*

4 *“(C) LIMITATION.—If the President makes a*
5 *finding pursuant to subparagraph (B), the*
6 *President shall—*

7 *“(i) publish an explanation dem-*
8 *onstrating that achievement of the goal is*
9 *technically infeasible or unreasonably costly*
10 *as a declaration in the record of decision*
11 *with regard to such remedy; and*

12 *“(ii) with regard to any protective con-*
13 *centration level established for a carcinogen,*
14 *ensure that the protective concentration*
15 *level does not result in an unacceptable risk*
16 *to human health unless the achievement of*
17 *such level is technically infeasible, in which*
18 *case the President shall take sufficient ac-*
19 *tion to minimize risk to human health.*

20 *“(2) SCOPE AND PURPOSE OF NATIONAL RISK*
21 *PROTOCOL.—*

22 *“(A) IN GENERAL.—The Administrator*
23 *shall promulgate a national risk protocol for*
24 *conducting risk assessments under this Act. The*
25 *national risk protocol shall be used for risk as-*

1 *sessments underlying determinations of the need*
2 *for remedial action, the establishment of protec-*
3 *tive concentration levels of chemicals, and the*
4 *evaluation of remedial alternatives.*

5 *“(B) SCENARIOS, FORMULAE, OR METH-*
6 *ODOLOGIES.—The national risk protocol shall es-*
7 *tablish, to the extent appropriate and prac-*
8 *ticable, each of the following:*

9 *“(i) Standardized exposure scenarios*
10 *defining exposure pathways for a range of*
11 *unrestricted and restricted land uses.*

12 *“(ii) Standardized formulae or meth-*
13 *odologies for—*

14 *“(I) evaluating the exposure path-*
15 *ways of concern under the standard-*
16 *ized exposure scenarios established*
17 *under clause (i); and*

18 *“(II) developing, consistent with*
19 *the national goal under paragraph (1),*
20 *chemical concentration levels protective*
21 *of receptors currently and reasonably*
22 *anticipated to be exposed via the path-*
23 *ways included in such scenarios for at*
24 *least the 100 contaminants most fre-*
25 *quently occurring at facilities ad-*

1 *dressed under this Act and for which*
2 *adequate toxicity information is avail-*
3 *able.*

4 “(iii) *Methodologies for facility-specific*
5 *evaluations of ecological risks.*

6 “(3) *STANDARDIZED FORMULAE OR METHODOLO-*
7 *GIES.—Standardized formulae or methodologies estab-*
8 *lished under paragraph (2) shall include the follow-*
9 *ing:*

10 “(A) *National constants for specific charac-*
11 *teristics of individual chemicals not expected to*
12 *vary from facility to facility.*

13 “(B) *Facility-specific variables for physical*
14 *characteristics of the facility and other factors.*
15 *Criteria for identifying such variables shall in-*
16 *clude each of the following:*

17 “(i) *Whether a characteristic or factor*
18 *can be objectively measured based on actual*
19 *facility data or reasonably estimated based*
20 *on credible scientific studies when facility-*
21 *measured data cannot be reasonably ob-*
22 *tained.*

23 “(ii) *Whether the effects of a char-*
24 *acteristic or factor are scientifically well-*
25 *understood.*

1 “(iii) Whether the impact of the char-
2 acteristic or factor on estimations of risk or
3 protective concentration levels is significant.

4 “(C) Exposure factors related to demo-
5 graphics (including separate exposure factors for
6 sensitive subpopulations to be applied where rel-
7 evant), activity patterns, and natural con-
8 straints. Defaults or ranges of default values
9 shall be established for such factors and used un-
10 less verifiable data are presented that the de-
11 faults are significantly different from actual fa-
12 cility conditions. In cases in which such data are
13 presented, the values shall be determined on a
14 site-specific basis after consideration of any
15 views expressed by the Community Working
16 Group, if available, and local residents.

17 “(4) APPLICATION OF NATIONAL RISK PROTO-
18 COL.—

19 “(A) ANALYSIS.—The President shall con-
20 duct an analysis at each such facility to deter-
21 mine which exposure scenarios, pathways, haz-
22 ardous substances, and pollutants or contami-
23 nants are relevant to that facility. Where stand-
24 ardized formulae or methodologies for addressing
25 such relevant scenarios, pathways, hazardous

1 *substances, and pollutants or contaminants are*
2 *available, the formulae or methodologies shall be*
3 *used.*

4 “(B) *NONEXISTENT EXPOSURE PATHWAY.—*
5 *Standardized formulae or methodologies for ex-*
6 *posure pathways that do not exist or are not rea-*
7 *sonably anticipated to exist in the future at a fa-*
8 *cility shall not be applied in establishing protec-*
9 *tive concentration levels for the facility.*

10 “(C) *UNAVAILABLE FORMULAE AND METH-*
11 *ODOLOGIES.—Where standardized formulae or*
12 *methodologies for particular exposure scenarios,*
13 *complex and atypical sites, exposure pathways,*
14 *or chemicals are unavailable, facility-specific*
15 *risk assessment shall be used to establish protec-*
16 *tive concentration levels under this subsection.*

17 “(5) *CONSIDERATIONS IN ESTABLISHING THE*
18 *NATIONAL RISK PROTOCOL.—*

19 “(A) *IN GENERAL.—In developing the na-*
20 *tional risk protocol under paragraph (2), the Ad-*
21 *ministrator shall evaluate and, to the degree ap-*
22 *propriate and practicable—*

23 “(i) *identify appropriate sources of*
24 *toxicity information;*

1 “(ii) define the use of probabilistic
2 modeling;

3 “(iii) identify criteria for the selection
4 and application of transport and fate mod-
5 els;

6 “(iv) define the use of high end and
7 central tendency exposure cases and as-
8 sumptions;

9 “(v) define the use of population risk
10 estimates in addition to individual risk es-
11 timates;

12 “(vi) define appropriate approaches for
13 addressing cumulative risks posed by mul-
14 tiple hazardous substances, multiple pollut-
15 ants or contaminants, or multiple exposure
16 pathways; and

17 “(vii) establish appropriate sampling
18 approaches and data quality requirements.

19 “(B) *GUIDELINES.*—The national risk pro-
20 tocol shall establish guidelines for all risk assess-
21 ments conducted under this Act. The risk assess-
22 ments and guidelines shall include reasonable es-
23 timates of plausible high end exposures that do
24 not exaggerate risks by inappropriately
25 compounding multiple hypothetical conservative

1 *assumptions. For purposes of establishing protec-*
2 *tive concentration levels, and other relevant re-*
3 *medial decisions, the risk assessments and guide-*
4 *lines used to establish the levels and make such*
5 *decisions shall rely on exposure estimates be-*
6 *tween the 90th percentile and the 95th percentile*
7 *of the combined estimated exposures that may be*
8 *experienced for all relevant exposure pathways.*
9 *The Administrator shall ensure that the actual*
10 *affected population, including, where relevant,*
11 *sensitive subpopulations, receives a level of pro-*
12 *tection as provided in paragraph (1).*

13 “(6) *PHASING AND UPDATING OF THE NATIONAL*
14 *RISK PROTOCOL.—The national risk protocol shall be*
15 *developed in accordance with a schedule promulgated*
16 *by the Administrator within 90 days after the date of*
17 *enactment of the Superfund Reform Act of 1994. The*
18 *national risk protocol may be developed and promul-*
19 *gated in phases as determined to be appropriate by*
20 *the Administrator. The risk protocol shall be proposed*
21 *not later than 12 months after the date of enactment*
22 *of the Superfund Reform Act of 1994 and shall be*
23 *promulgated not later than 18 months after such date.*
24 *The Administrator also shall determine an appro-*
25 *priate approach and schedule for ensuring that the*

1 *national risk protocol remains current with emerging*
2 *science and relevant Agency policy.*

3 “(7) *FEDERAL AND STATE LAWS.*—

4 “(A) *REQUIREMENTS.*—A remedial action
5 *shall be required to—*

6 “(i) *comply with the substantive re-*
7 *quirements of any promulgated standard,*
8 *requirement, criterion, or limitation under*
9 *any Federal or more stringent State envi-*
10 *ronmental or facility siting law that is ap-*
11 *plicable to the conduct or operation of the*
12 *remedial action;*

13 “(ii) *attain any promulgated protec-*
14 *tive concentration levels applicable to deter-*
15 *mining the level of cleanup for remedial ac-*
16 *tions conducted under any State environ-*
17 *mental law where such levels are more*
18 *stringent than—*

19 “(I) *those established under clause*
20 *(i) or (ii) of paragraph (8)(A); or*

21 “(II) *the concentration levels de-*
22 *termined to be protective for a given*
23 *facility in accordance with the require-*
24 *ments of paragraph (2); and*

1 “(iii) *comply with or attain any other*
2 *promulgated standard, requirement, cri-*
3 *terion, or limitation under any State envi-*
4 *ronmental or facility siting law that the*
5 *State demonstrates is consistently applied*
6 *to remedial actions under State law, and*
7 *that the State determines, through a pro-*
8 *mulgation process that includes public no-*
9 *tice, comment, and written response thereto,*
10 *and opportunity for judicial review, applies*
11 *to remedial actions under this Act.*

12 “(B) *COMPLIANCE.*—*Compliance with any*
13 *State standard, requirement, criterion, or limita-*
14 *tion under subparagraph (A) shall be required at*
15 *a given facility if the standard, requirement, cri-*
16 *terion, or limitation has been identified by the*
17 *State to the President in a timely manner as ap-*
18 *plicable at that facility. In addition, each State*
19 *shall publish a comprehensive list of the promul-*
20 *gated standards, requirements, criteria, or limi-*
21 *tations that the State may apply to remedial ac-*
22 *tions under this Act and revise such list periodi-*
23 *cally, as requested by the President.*

24 “(C) *PROCEDURAL REQUIREMENTS.*—*Proce-*
25 *dural requirements of Federal and State stand-*

ards, requirements, criteria, or limitations, including permitting requirements, shall not apply to response actions conducted onsite at a facility. Compliance with subparagraph (A) shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same media in or very near then existing areas of contamination onsite at the facility.

“(D) *SELECTION OF DIFFERENT STANDARD.*—

“(i) *FINDING.*—The President may select for a facility a remedial action meeting the requirements of paragraph (1) that does not comply with or attain a Federal or State standard, requirement, criterion, or limitation as required by subparagraph (A), if the President finds any of the following:

“(I) *PART OF REMEDIAL ACTION.*—The remedial action selected is only part of a total remedial action that will comply with or attain the applicable requirements of subparagraph (A) when completed.

1 “(II) *GREATER RISK.*—Compli-
2 *ance with or attainment of such stand-*
3 *ard, requirement, criterion, or limita-*
4 *tion at that facility will result in*
5 *greater risk to human health and the*
6 *environment than alternative options.*

7 “(III) *TECHNICALLY IMPRACTICA-*
8 *BLE.*—Compliance with or attainment
9 *of such standard, requirement, cri-*
10 *terion, or limitation is technically im-*
11 *practicable from an engineering per-*
12 *spective.*

13 “(IV) *EQUIVALENT TO STANDARD*
14 *OF PERFORMANCE.*—The remedial ac-
15 *tion selected will attain a standard of*
16 *performance that is equivalent to that*
17 *required under a standard, require-*
18 *ment, criterion, or limitation identi-*
19 *fied under subparagraph (A) through*
20 *use of another approach.*

21 “(V) *INCONSISTENT APPLICA-*
22 *TION.*—With respect to a State stand-
23 *ard, requirement, criterion, limitation,*
24 *or level identified under clause (i) or*
25 *(ii) of subparagraph (A), the State has*

1 *not consistently applied (or dem-*
2 *onstrated the intention to consistently*
3 *apply) the standard, requirement, cri-*
4 *terion, limitation, or level in similar*
5 *circumstances at other remedial ac-*
6 *tions within the State.*

7 “(VI) *BALANCE.*—*In the case of a*
8 *remedial action to be undertaken solely*
9 *under section 104 using amounts from*
10 *the Fund, a selection of a remedial ac-*
11 *tion that complies with or attains*
12 *standards, requirements, criteria, or*
13 *limitations required in subparagraph*
14 *(A) will not provide a balance between*
15 *the need for protection of public health*
16 *and welfare and the environment at*
17 *the facility under consideration, and*
18 *the availability of amounts from the*
19 *Fund to respond to other facilities that*
20 *present or may present a threat to*
21 *public health or welfare or the environ-*
22 *ment, taking into consideration the rel-*
23 *ative immediacy of such threat.*

24 “(ii) *PUBLICATION.*—*The President*
25 *shall publish any findings made under*

1 *clause (i), together with an explanation and*
2 *appropriate documentation.*

3 “(8) *REMEDIAL ACTIONS FOR CONTAMINATED*
4 *WATER.—*

5 “(A) *GENERAL REQUIREMENTS FOR REME-*
6 *DIAL ACTION.—*

7 “(i) *DRINKING WATER STANDARDS.—*

8 *Where a maximum contaminant level or a*
9 *nonzero maximum contaminant level goal*
10 *has been established for a hazardous sub-*
11 *stance or a pollutant or contaminant under*
12 *title XIV of the Public Health Service Act*
13 *(commonly known as the ‘Safe Drinking*
14 *Water Act’) (42 U.S.C. 300f et seq.), a re-*
15 *medial action with respect to such hazard-*
16 *ous substance or pollutant or contaminant*
17 *shall attain such level or goal in any sur-*
18 *face water or ground water that may be*
19 *used for drinking water, unless a more*
20 *stringent remedial action is necessary to*
21 *protect wildlife or aquatic life consistent*
22 *with designated uses for the water and*
23 *water quality criteria for wildlife or aquat-*
24 *ic life issued under the Federal Water Pollu-*
25 *tion Control Act (33 U.S.C. 1251 et seq.).*

1 *Protective concentration levels for ground*
2 *water or surface water meeting the require-*
3 *ments of the preceding sentence shall be*
4 *deemed to meet the requirements of para-*
5 *graph (1).*

6 “(ii) *OTHER CONTAMINANTS.—Reme-*
7 *dial actions and protective concentration*
8 *levels with respect to other hazardous sub-*
9 *stances, and other pollutants or contami-*
10 *nants, in contaminated surface water or*
11 *ground water that may be used for drinking*
12 *water shall ensure attainment of the goal es-*
13 *tablished in paragraph (1).*

14 “(iii) *SELECTION OF GROUND WATER*
15 *REMEDIES.—The President shall identify*
16 *and select an appropriate remedy for con-*
17 *taminated ground water that ensures at-*
18 *tainment of the goal established in para-*
19 *graph (1), or attains a standard described*
20 *in clause (i), through the evaluation of re-*
21 *medial alternatives and by taking into con-*
22 *sideration the factors identified in sub-*
23 *section (b)(3)(A) together with each of the*
24 *following factors:*

1 “(I) *The urgency of the need for*
2 *the ground water.*

3 “(II) *The ability of such remedy*
4 *to prevent human exposure to such*
5 *contamination.*

6 “(iv) *NATURAL ATTENUATION.—The*
7 *President may select, for all or a part of the*
8 *final remedy for a facility, a remedy that*
9 *utilizes natural attenuation (which may in-*
10 *clude dilution and dispersion, but only to*
11 *the extent necessary to achieve*
12 *biodegradation).*

13 “(v) *OTHER GROUND WATER.—Reme-*
14 *dial actions for contaminated ground water*
15 *(other than ground water that may be used*
16 *for drinking water) shall attain levels ap-*
17 *propriate for the then current or reasonably*
18 *anticipated future use of such ground water,*
19 *or levels appropriate considering the then*
20 *current use of any ground water or surface*
21 *water to which such contaminated ground*
22 *water discharges.*

23 “(B) *EXCEPTION.—*

24 “(i) *IN GENERAL.—The President may*
25 *select protective concentration levels that do*

1 *not achieve the requirements of subpara-*
2 *graph (A), if the President determines that*
3 *achievement of the requirements is tech-*
4 *nically impracticable from an engineering*
5 *perspective and each of the requirements of*
6 *this subparagraph is met. The President*
7 *shall, to the extent practicable, make any*
8 *such determination of technical imprac-*
9 *ticability on the basis of projections, model-*
10 *ing, or other analytical techniques without*
11 *any requirement that remedial measures de-*
12 *signed to achieve the requirements of sub-*
13 *paragraph (A) first be constructed, in-*
14 *stalled, or operated. The preceding sentence*
15 *shall not be interpreted to prevent the Presi-*
16 *dent from selecting or requiring implemen-*
17 *tation of any other response action, includ-*
18 *ing actions pursuant to subparagraph (D).*

19 “(ii) *OPERABLE UNITS.*—A remedial
20 *action for a facility based on a protective*
21 *concentration level selected under this sub-*
22 *paragraph shall, whenever appropriate con-*
23 *sidering the physical characteristics of the*
24 *facility, be divided into 2 or more operable*
25 *units reflecting—*

1 “(I) the concentrations and char-
2 acteristics (including density, phase,
3 and propensity to adsorb) of the haz-
4 ardous substances or pollutants or con-
5 taminants in ground water; or

6 “(II) the hydrogeologic and
7 hydrological characteristics of the facil-
8 ity.

9 The President shall make separate deter-
10 minations with respect to the technical im-
11 practicability of attaining protective con-
12 centration levels achieving the requirements
13 of subparagraph (A) for each operable unit
14 at a facility and shall define operable units
15 so as to maximize the volume of ground
16 water that will attain such levels.

17 “(iii) CONTAINMENT.—Remedial ac-
18 tions for each operable unit for which the
19 President has made a determination pursu-
20 ant to clause (i) shall—

21 “(I) with respect to an operable
22 unit containing hazardous substances
23 in high concentrations or in a non-
24 aqueous phase to the extent technically
25 feasible, prevent migration of hazard-

1 ous substances or pollutants or con-
2 taminants from the operable unit; and

3 “(II) to the extent technically fea-
4 sible, prevent any increase in the spa-
5 tial extent of contamination, beyond
6 the area of contamination detected or
7 known at the time the remedial action
8 is selected, that may affect ground
9 water that may be used for drinking
10 water.

11 The President may waive the requirements
12 of subclause (II) for an operable unit con-
13 taining a relatively low concentration of a
14 hazardous substance or pollutant or con-
15 taminant over a large area if containment
16 would be technically impracticable from an
17 engineering perspective.

18 “(iv) REMOVING SOURCE MATERIAL
19 AND DISSOLVED CONTAMINANTS.—Remedial
20 actions based on protective concentration
21 levels selected under this subparagraph shall
22 reduce the volume or toxicity of hazardous
23 substances or pollutants or contaminants
24 remaining in ground water at the facility
25 to the extent technically practicable from an

1 *engineering perspective and appropriate for*
2 *effective containment as required under*
3 *clause (iii) and consistent with the technical*
4 *requirements for the remedial actions. With*
5 *respect to an operable unit containing a rel-*
6 *atively low concentration of a hazardous*
7 *substance or pollutant or contaminant over*
8 *a large area, the requirements of the preced-*
9 *ing sentence may be modified if the Presi-*
10 *dent finds that such a reduction is tech-*
11 *nically impracticable from an engineering*
12 *perspective.*

13 “(v) *OTHER REQUIREMENTS.—Reme-*
14 *dial actions based on protective concentra-*
15 *tion levels selected under this subparagraph*
16 *shall—*

17 “(I) *prevent or eliminate any ac-*
18 *tual human exposure through drinking*
19 *water to any hazardous substance or*
20 *pollutant or contaminant in excess of*
21 *the maximum contaminant level or*
22 *nonzero maximum contaminant level*
23 *goal established for the hazardous sub-*
24 *stance or pollutant or contaminant*
25 *under title XIV of the Public Health*

1 *Service Act (commonly known as the*
2 *‘Safe Drinking Water Act’) (42 U.S.C.*
3 *300f et seq.) and may include, as ap-*
4 *propriate, the provision of an alternate*
5 *water supply;*

6 *“(II) unless technically imprac-*
7 *ticable from an engineering perspec-*
8 *tive, prevent impairment of any sur-*
9 *face water designated use established*
10 *under section 303 of the Federal Water*
11 *Pollution Control Act (33 U.S.C.*
12 *1313), caused by such hazardous sub-*
13 *stance or pollutant or contaminant in*
14 *any surface water body into which*
15 *such contaminated ground water is*
16 *known or projected to enter; and*

17 *“(III) provide for long-term mon-*
18 *itoring of such ground water, as ap-*
19 *propriate (including any information*
20 *needed for the purposes of review under*
21 *subsection (c)).*

22 *“(vi) PERIODIC REVIEW.—Each reme-*
23 *dial action based upon protective concentra-*
24 *tion levels selected under this subparagraph*
25 *shall be reviewed every 5 years as provided*

1 *in subsection (c). If the President deter-*
2 *mines that conditions at the facility have*
3 *changed or that remedial alternatives have*
4 *become available, so as to attain protective*
5 *concentration levels achieving the require-*
6 *ments of subparagraph (A), the President*
7 *shall select a new remedy pursuant to this*
8 *paragraph.*

9 “(vii) *PREMIUM.—*

10 “(I) *TECHNOLOGY DEVELOP-*
11 *MENT.—Whenever the President selects*
12 *a remedial action based on protective*
13 *concentration levels selected pursuant*
14 *to this subparagraph or conducts a re-*
15 *view of such action under subsection*
16 *(c), the President shall impose a pre-*
17 *mium that shall be considered a re-*
18 *sponse cost otherwise incurred at the*
19 *facility reflecting—*

20 “(aa) *the cost to monitor*
21 *ground water at the facility to en-*
22 *sure that the requirements of this*
23 *subparagraph continue to be met;*
24 *and*

1 “(bb) the opportunities to de-
2 velop new remediation tech-
3 nologies that may be applicable to
4 the facility.

5 Total premiums collected under this
6 subclause shall not exceed \$50,000,000
7 per year in the aggregate for all facili-
8 ties with remedial actions based on
9 protective concentration levels selected
10 under this subparagraph. For each fa-
11 cility with a remedial action based on
12 a protective concentration level selected
13 under this subparagraph, the President
14 shall assess the premium based on the
15 extent and severity of the ground water
16 contamination at the facility. In no
17 case shall the total of the premiums
18 collected from any single potentially
19 responsible party under this subclause
20 for a facility exceed \$1,000,000. The
21 President may reduce or waive a pre-
22 mium described in this subclause for a
23 potentially responsible party at a facil-
24 ity if the President determines that
25 such a party is a small business and

1 *has a limited ability to pay or that*
2 *such a party is currently (as of the*
3 *date of the waiver) making a signifi-*
4 *cant investment for research or devel-*
5 *opment for new technologies that may*
6 *be applicable to the ground water con-*
7 *tamination at the facility.*

8 “(II) *NEW RELEASES.*—*In the*
9 *case of any remediation of contami-*
10 *nated ground water resulting from any*
11 *release of a hazardous substance or pol-*
12 *lutant or contaminant from a facility*
13 *constructed after the date of enactment*
14 *of the Superfund Reform Act of 1994,*
15 *and in the case of ground water reme-*
16 *diation for operable units where the*
17 *potentially responsible party is unable*
18 *to demonstrate that the initial release*
19 *occurred prior to the date of enactment*
20 *of the Superfund Reform Act of 1994,*
21 *the President shall impose a premium*
22 *that shall be considered a response cost*
23 *reflecting the reasonable capital and*
24 *operating costs that would have been*

1 *incurred at the facility to prevent the*
2 *release.*

3 “(viii) *USES OF PREMIUM PAY-*
4 *MENTS.—*

5 “(I) *IN GENERAL.—*Premiums col-
6 *lected pursuant to clause (vii) shall be*
7 *deposited in the Fund.*

8 “(II) *MONITORING AND ASSESS-*
9 *MENT.—*The premiums may be appro-
10 *priated to conduct monitoring and as-*
11 *essment, only to the extent necessary*
12 *to assess the development of new tech-*
13 *nologies, for facilities for which rem-*
14 *edies have been selected incorporating*
15 *protective concentration levels selected*
16 *under this subparagraph.*

17 “(III) *GRANTS.—*The premiums
18 *may be appropriated to make grants*
19 *under section 311(b)(3) to develop tech-*
20 *nologies designed to achieve remedi-*
21 *ation of ground water at facilities at*
22 *which the Administrator has made de-*
23 *terminations described in subpara-*
24 *graph (B)(i). In addition to complying*
25 *with the requirements of section 311(b),*

1 the Administrator, in evaluating ap-
2 plications for such a grant, shall evalu-
3 ate the applications on the basis of sci-
4 entific and technical merit and fea-
5 sibility, using a scientific peer review
6 process. The requirements of section
7 311(b)(5)(J) shall not apply with re-
8 spect to such a grant. The grant shall
9 be made in an amount of not to exceed
10 \$1,000,000, unless the Administrator
11 finds that the project proposed to be
12 carried out with the grant has unusual
13 technical merit and that additional
14 funding is necessary and appropriate.
15 In no case shall the amount of such a
16 grant exceed \$5,000,000.

17 “(C) ALTERNATE CONCENTRATION LIM-
18 ITS.—For purposes of this paragraph, a process
19 for establishing alternate concentration limits to
20 those otherwise applicable to hazardous sub-
21 stances or pollutants or contaminants in ground
22 water may not be used to establish applicable
23 standards under this paragraph if the process
24 assumes a point of human exposure beyond the
25 boundary of the facility, as defined at the conclu-

1 *sion of the remedial investigation and feasibility*
2 *study for the facility, except where—*

3 *“(i) there are known and projected*
4 *points of entry of such ground water into*
5 *surface water;*

6 *“(ii) on the basis of measurements or*
7 *projections, there is or will be no statis-*
8 *tically significant increase of such constitu-*
9 *ents from such ground water in such surface*
10 *water at the point of entry or at any point*
11 *where there is reason to believe accumula-*
12 *tion of the constituents may occur down-*
13 *stream; and*

14 *“(iii) the remedial action includes en-*
15 *forceable measures that will preclude human*
16 *exposure to the contaminated ground water*
17 *at any point between the facility boundary*
18 *and all known and projected points of entry*
19 *of such ground water into surface water.*

20 *“(D) PREREMEDIAL RESPONSE ACTIONS.—*

21 *“(i) INFORMATION COLLECTION.—The*
22 *President shall ensure, to the extent prac-*
23 *ticable, that hydrogeologic and contami-*
24 *nant-related information necessary to select*
25 *final ground water remedial actions shall be*

1 *collected as part of site characterization ac-*
2 *tivities prior to and during the remedial in-*
3 *vestigation for the facility. Such data shall*
4 *include information from response actions*
5 *taken pursuant to clause (ii).*

6 “(ii) *EARLY RESPONSE ACTIONS.*—*The*
7 *President shall, as appropriate, select in ac-*
8 *cordance with subparagraph (A)(iii) and*
9 *implement response actions (referred to in-*
10 *dividually in this clause as a ‘preremedial*
11 *action’), prior to selecting a final remedial*
12 *action, to minimize contaminant migration*
13 *and reduce the risk of adverse effects on*
14 *human health and the environment from*
15 *contaminated ground water. In accordance*
16 *with the provisions of subparagraph (B),*
17 *the actions may include—*

18 “(I) *containment that prevents in-*
19 *creases in the areal extent of contami-*
20 *nation affecting ground water that*
21 *may be used for drinking water;*

22 “(II) *removal of source material;*

23 “(III) *remediation of ground*
24 *water containing high concentrations*

1 *of hazardous substances or pollutants*
2 *or contaminants; or*

3 “(IV) *installation of physical bar-*
4 *riers or caps to contain releases from*
5 *source materials.*

6 *Each preremedial action taken under this*
7 *clause shall be monitored to collect informa-*
8 *tion for site characterization and selection*
9 *of final remedial actions.*

10 “(E) *DEFINITION.—For purposes of this*
11 *paragraph, the phrase ‘ground water that may*
12 *be used for drinking water’ shall include all*
13 *ground water except—*

14 “(i) *ground water containing more*
15 *than 10,000 milligrams per liter total dis-*
16 *solved solids from naturally occurring*
17 *sources;*

18 “(ii) *ground water that is so contami-*
19 *nated by naturally occurring conditions, or*
20 *by the effects of broad scale human activity,*
21 *that restoration to the requirements of sub-*
22 *paragraph (A) is impracticable; or*

23 “(iii) *ground water with respect to*
24 *which the potential source of drinking water*
25 *is physically incapable of yielding a quan-*

1 *tity of 150 gallons per day of water to a*
 2 *well or spring without adverse environ-*
 3 *mental effects.”.*

4 (b) *RADIONUCLIDES.—Section 121(d) (42 U.S.C.*
 5 *9621(d)) (as amended by subsection (a)) is further amended*
 6 *by adding at the end the following:*

7 “(11) *RADIONUCLIDES DETERMINATION.—*

8 “(A) *APPLICATION OF SINGLE NUMERICAL*
 9 *HEALTH RISK LEVEL.—Effective 6 months after*
 10 *the health risk levels established pursuant to*
 11 *paragraph (1) become effective, the single numer-*
 12 *ical health risk level for carcinogens shall apply*
 13 *to radionuclides, except as provided in subpara-*
 14 *graph (B).*

15 “(B) *ALTERNATIVE QUANTIFIABLE BASIS*
 16 *FOR PROTECTIVE CONCENTRATION LEVELS.—*

17 “(i) *DETERMINATION.—The Adminis-*
 18 *trator shall determine, by rule and after no-*
 19 *tice and opportunity for public comment,*
 20 *whether the health risk level for carcinogens*
 21 *established under paragraph (1) cannot be*
 22 *attained for a radionuclide, due to the tech-*
 23 *nical infeasibility of detecting radionuclide*
 24 *contamination or distinguishing radio-*
 25 *nuclide contamination resulting from*

1 *human activity from the ambient level of*
2 *radionuclides in the environment.*

3 “(ii) *ESTABLISHMENT OF ALTER-*
4 *NATIVE QUANTIFIABLE BASIS.—If the Ad-*
5 *ministrator determines pursuant to clause*
6 *(i) that the same level of protection cannot*
7 *be attained for a radionuclide, the Adminis-*
8 *trator shall establish, by rule and after no-*
9 *tice and opportunity for public comment,*
10 *an alternative quantifiable basis for setting*
11 *a protective concentration level for such ra-*
12 *dionuclide. Such basis shall apply to the ra-*
13 *dionuclide in lieu of the single numerical*
14 *health risk level, subject to clause (iii).*

15 “(iii) *LEVEL OF PROTECTION.—The al-*
16 *ternative quantifiable basis referred to in*
17 *clause (ii) shall require a level of protection*
18 *as close as possible to the level of protection*
19 *provided by the single numerical health risk*
20 *level for carcinogens established pursuant to*
21 *paragraph (1), consistent with the deter-*
22 *mination described in clause (i). Such basis*
23 *shall apply to a radionuclide unless*
24 *achievement of the level of protection re-*
25 *quired by the basis is determined to be tech-*

1 *nically infeasible or unreasonably costly*
2 *pursuant to this subsection. In any case in*
3 *which the President selects a remedy that*
4 *does not achieve the national goal estab-*
5 *lished under paragraph (1), the President*
6 *shall publish an explanation of the reason*
7 *for the decision.*

8 “(iv) *TIMING.*—*The Administrator*
9 *shall make the determination required*
10 *under clause (i) and, as appropriate, issue*
11 *a final rule pursuant to clause (ii) no later*
12 *than 6 months after the health risk level for*
13 *carcinogens becomes effective under para-*
14 *graph (1).*

15 “(C) *APPLICATION OF OTHER LAWS.*—*In*
16 *the case of remedial activities conducted under*
17 *this Act, standards promulgated by the Adminis-*
18 *trator under any other law that apply to remedi-*
19 *ation of a radionuclide shall continue to apply*
20 *until the earlier of—*

21 “(i) *6 months after the date on which*
22 *health risk levels become effective under*
23 *paragraph (1); or*

1 “(ii) the date on which a final rule is
2 issued under subparagraph (B)(ii) for the
3 radionuclide concerned.”.

4 (c) *ALTERNATE WATER SUPPLY*.—Section 118 (42
5 *U.S.C. 9618*) is amended—

6 (1) by striking “For” and inserting the follow-
7 ing:

8 “(a) *IN GENERAL*.—For”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(b) *ALTERNATE WATER SUPPLY*.—In any case where
12 a remedial action at a facility includes a protective con-
13 centration level established pursuant to section
14 121(d)(8)(B) and contamination from the facility has re-
15 sulted, or is expected to result, in the presence of a hazard-
16 ous substance or a pollutant or contaminant in excess of
17 the maximum contaminant level or nonzero maximum con-
18 taminant level goal established for the hazardous substance
19 or pollutant or contaminant under title XIV of the Public
20 Health Service Act (commonly known as the ‘Safe Drinking
21 Water Act’) (42 *U.S.C. 300f et seq.*) in a drinking water
22 supply, the remedial action shall include the prompt provi-
23 sion of an alternate supply of water for drinking and house-
24 hold purposes. The alternate supply of drinking water shall
25 meet maximum contaminant levels and nonzero maximum

1 *contaminant level goals established under title XIV of the*
 2 *Public Health Service Act.”.*

3 *(d) CONFORMING AMENDMENTS.—*

4 *(1) Section 117(a)(2) (42 U.S.C. 9617(a)(2)) is*
 5 *amended by striking “121(d)(4)” and inserting*
 6 *“121(d)(7)(D)”.*

7 *(2) Section 121(f) (42 U.S.C. 9621(f)) is amend-*
 8 *ed by striking “(d)(4)” each place it appears and in-*
 9 *serting “(d)(7)(D)”.*

10 ***SEC. 502. REMEDY SELECTION.***

11 *Subsection (b) of section 121 (42 U.S.C. 9621(b)) is*
 12 *amended to read as follows:*

13 *“(b) GENERAL RULES.—*

14 *“(1) SELECTION OF PROTECTIVE REMEDIES.—*
 15 *Remedies selected at individual facilities shall be pro-*
 16 *ductive of human health and the environment, consist-*
 17 *ent with the factors described in paragraph (3)(A). A*
 18 *remedial action may achieve protection of human*
 19 *health and the environment through—*

20 *“(A) treatment that reduces the toxicity,*
 21 *mobility, or volume of hazardous substances or*
 22 *pollutants or contaminants;*

23 *“(B) containment or other engineering con-*
 24 *trols to limit exposure to such substances, pollut-*
 25 *ants, or contaminants;*

1 “(C) a combination of such treatment and
2 such containment; or

3 “(D) another method of protection.

4 *The method or methods of remediation appropriate*
5 *for a given facility shall be determined through the*
6 *evaluation of remedial alternatives and the selection*
7 *process under paragraphs (2) and (3). When deter-*
8 *mining the appropriate remedial method, the Presi-*
9 *dent shall prefer treatment for hot spots. This pref-*
10 *erence shall not apply to materials that do not con-*
11 *stitute hot spots.*

12 “(2) LAND USE.—

13 “(A) FACTORS.—*In selecting a remedy, the*
14 *President shall take into account the reasonably*
15 *anticipated future uses of land at a facility as*
16 *required by this Act. In identifying reasonably*
17 *anticipated future land uses, the President shall*
18 *consider factors, which generally shall include*
19 *each of the following:*

20 “(i) *Any consensus recommendation of*
21 *the Community Working Group and any*
22 *other views expressed by members of the*
23 *community.*

24 “(ii) *The land use history of the facil-*
25 *ity and surrounding properties, the current*

1 *land uses of the facility (as of the date of*
2 *the identification of the uses) and surround-*
3 *ing properties, recent development patterns*
4 *in the area where the facility is located, and*
5 *population projections for that area.*

6 “(iii) *Federal or State land use des-*
7 *ignations, including designations of Federal*
8 *facilities and national parks, State ground*
9 *water or surface water recharge areas estab-*
10 *lished under a State’s comprehensive protec-*
11 *tion plan for ground water or surface water,*
12 *and recreational areas.*

13 “(iv) *The current land use zoning (as*
14 *of the date of the identification of the uses)*
15 *and future land use plans of the local gov-*
16 *ernment with land use regulatory authority,*
17 *and general goals and policies expressed in*
18 *local or State comprehensive plans or relat-*
19 *ed documents.*

20 “(v) *The potential for economic rede-*
21 *velopment.*

22 “(vi) *The proximity of the contamina-*
23 *tion to residences, sensitive populations or*
24 *ecosystems, natural resources, or areas of*
25 *unique historic or cultural significance.*

1 “(vii) *Current plans (as of the date of*
2 *the identification of the uses) for the facility*
3 *by the property owner or owners, not in-*
4 *cluding potential voluntary remedial meas-*
5 *ures.*

6 “(B) *CONSIDERATIONS.—In developing its*
7 *recommendation, the Community Working*
8 *Group shall consider factors described in clauses*
9 *(ii) through (vii) of subparagraph (A), and the*
10 *President shall give substantial weight to that*
11 *recommendation where consensus is reached, or*
12 *substantial weight to the views of local residents*
13 *where the Community Working Group does not*
14 *reach consensus, in accordance with section*
15 *117(g).*

16 “(C) *INFORMATION.—All information con-*
17 *sidered by the President in evaluating reason-*
18 *ably anticipated future land uses under this*
19 *paragraph shall be included in the administra-*
20 *tive record under section 113(k).*

21 “(3) *APPROPRIATE REMEDIAL ACTION.—*

22 “(A) *FACTORS.—The President shall iden-*
23 *tify and select an appropriate remedy that pre-*
24 *vents exposures to hazardous substances or pol-*
25 *lutants or contaminants in excess of protective*

1 *concentration levels established under subsection*
2 *(d) by balancing each of the following factors:*

3 “(i) *The effectiveness of the remedy.*

4 “(ii) *The long-term reliability of the*
5 *remedy, defined as its capability to achieve*
6 *long-term protection of human health and*
7 *the environment considering the preference*
8 *for treatment of hot spots.*

9 “(iii) *Any short-term risk posed by the*
10 *implementation of the remedy to the com-*
11 *munity, to those engaged in the cleanup ef-*
12 *fort, and to the environment.*

13 “(iv) *The acceptability of the remedy*
14 *to the community.*

15 “(v) *The reasonableness of the cost of*
16 *the remedy.*

17 “(B) *HOT SPOTS.—Each of the following*
18 *shall apply to the remediation of hot spots:*

19 “(i) *DEFINITION.—For purposes of this*
20 *section, the term ‘hot spot’ means a discrete*
21 *area within a facility that contains hazard-*
22 *ous substances or pollutants or contami-*
23 *nants that are present in high concentra-*
24 *tions, are highly mobile, or cannot be reli-*
25 *ably contained, and that would present a*

1 *significant risk to human health or the en-*
2 *vironment should exposure occur. The Presi-*
3 *dent shall develop guidelines for the identi-*
4 *fication of hot spots. Such guidelines shall*
5 *recommend appropriate field investigations*
6 *that will not require extraordinarily com-*
7 *plex or costly measures.*

8 “(ii) *REMEDY.*—*In determining an ap-*
9 *propriate remedy for hot spots, the Presi-*
10 *dent shall consider the factors under sub-*
11 *paragraph (A). With respect to the factor*
12 *described in subparagraph (A)(v), the Presi-*
13 *dent shall use a higher threshold for evalu-*
14 *ating the reasonableness of costs for hot spot*
15 *treatment relative to the remediation of*
16 *nonhot spot materials.*

17 “(iii) *TREATMENT.*—*The President*
18 *shall select a remedy requiring treatment of*
19 *materials constituting hot spots unless an*
20 *appropriate treatment technology is un-*
21 *available or is available only at unreason-*
22 *able cost. In such instances, the President*
23 *shall select an interim containment remedy*
24 *for such hot spot subject to adequate mon-*
25 *itoring and public reporting to ensure its*

1 *continued integrity and shall review the in-*
2 *terim containment remedy in accordance*
3 *with subsection (c). When the appropriate*
4 *treatment technology becomes available, as*
5 *determined by the President, a remedy ap-*
6 *plying that treatment shall be considered in*
7 *accordance with this section.*

8 “(iv) *FINAL CONTAINMENT REMEDY.—*
9 *The President may select a final contain-*
10 *ment remedy for a hot spot at a landfill,*
11 *mining site, or similar facility under each*
12 *of the following circumstances:*

13 “(I) *SMALL HOT SPOTS.—The hot*
14 *spot is small relative to the overall vol-*
15 *ume of waste or contamination being*
16 *addressed, the hot spot is not readily*
17 *identifiable and accessible, and without*
18 *the presence of the hot spot contain-*
19 *ment would have been selected as the*
20 *appropriate remedy under subpara-*
21 *graph (A) for the larger body of waste*
22 *or area of contamination in which the*
23 *hot spot is located.*

24 “(II) *HIGH VOLUME OR LARGE*
25 *AREA HOT SPOTS.—The volume and*

1 *areal extent of the hot spot is extraor-*
2 *dinary compared to other facilities list-*
3 *ed on the National Priorities List, and*
4 *it is highly unlikely due to the size and*
5 *other characteristics of the hot spot*
6 *that any treatment technology will be*
7 *developed that could be implemented at*
8 *reasonable cost.*

9 *With respect to a hot spot described in subclause*
10 *(II), the President may require, pursuant to sub-*
11 *paragraph (A), the removal of the hot spot to an*
12 *appropriate location where necessary to ensure*
13 *reliable containment of the hot spot, including*
14 *the removal of the hot spot from a flood plain.*
15 *Where final containment for a hot spot is se-*
16 *lected, the President shall publish an explanation*
17 *of the basis for that selection.*

18 *“(4) INSTITUTIONAL CONTROLS.—In any case in*
19 *which the President selects a remedial action that*
20 *provides that a hazardous substance will remain at*
21 *the facility at a concentration level above the protec-*
22 *tive concentration level for unrestricted land use es-*
23 *tablished pursuant to this section after the final reme-*
24 *dial action is completed, the President shall ensure*
25 *that an adequate institutional control (as described in*

1 *the national contingency plan, as in effect on the date*
 2 *of enactment of this subsection) is incorporated into*
 3 *the remedial action to achieve protection of human*
 4 *health and the environment.*

5 “(5) *GENERIC REMEDIES.*—In order to stream-
 6 *line the remedy selection process and to facilitate*
 7 *rapid voluntary remedial action under this Act, the*
 8 *President shall establish, taking into account the fac-*
 9 *tors enumerated in paragraph (3)(A), cost-effective ge-*
 10 *neric remedies for categories of facilities, and expe-*
 11 *ditated procedures that include community involvement*
 12 *for selecting a generic remedy at an individual facil-*
 13 *ity. To be eligible for selection at a facility, a generic*
 14 *remedy shall be protective of human health and the*
 15 *environment at that facility. In appropriate cases, the*
 16 *President may select a generic remedy without consid-*
 17 *ering alternatives to the generic remedy.”.*

18 **SEC. 503. MISCELLANEOUS AMENDMENTS TO SECTION 121.**

19 (a) *REVIEW.*—Section 121(c) (42 U.S.C. 9621(c)) is
 20 *amended—*

21 (1) *in the first sentence, by striking “initiation”*
 22 *and inserting “completion of all physical onsite con-*
 23 *struction”; and*

24 (2) *in the second sentence—*

1 (A) by inserting “(1)” after “it is the judg-
2 ment of the President that”; and

3 (B) by inserting after “section 104 or 106,”
4 the following: “or (2) an interim containment
5 remedy was selected for such site and an appro-
6 priate final remedy applying treatment is avail-
7 able as described in subsection (b)(3)(B)(iii) and
8 appropriate to select in accordance with sub-
9 section (b)(3)(A),”.

10 (b) *PERMIT APPLICATION*.—Section 121(e) (42 U.S.C.
11 9621(e)) is amended—

12 (1) in paragraph (1)—

13 (A) by striking “(1)”;

14 (B) in the first sentence, by inserting “or
15 permit application” before “shall be required”;
16 and

17 (C) by adding at the end the following new
18 sentence: “No Federal, State, or local permit or
19 permit application shall be required for onsite or
20 offsite activities conducted under section
21 311(b).”; and

22 (2) by striking paragraph (2).

23 **SEC. 504. RESPONSE AUTHORITIES.**

24 (a) *STUDIES AND INVESTIGATIONS*.—The second sen-
25 tence of section 104(b)(1) (42 U.S.C. 9604(b)(1)) is amend-

1 *ed by striking “studies” and all that follows through the*
 2 *period at the end of the sentence and inserting the following:*
 3 *“actions, studies, or investigations as the President may de-*
 4 *termine to be necessary or appropriate to plan and direct*
 5 *response actions or to enforce the provisions of this Act and*
 6 *shall be entitled to recover the costs thereof.”.*

7 *(b) DISPOSAL AUTHORITY.—Section 104(j) (42 U.S.C.*
 8 *9604(j)) is amended—*

9 *(1) in the first sentence of paragraph (1), by*
 10 *striking “remedial” and inserting “response”;*

11 *(2) by striking paragraph (2);*

12 *(3) by redesignating paragraph (3) as para-*
 13 *graph (2);*

14 *(4) in paragraph (2) (as so redesignated), by*
 15 *striking “estate” and inserting “property”; and*

16 *(5) by adding after paragraph (2) (as so redesign-*
 17 *ated) the following new paragraph:*

18 *“(3) DISPOSAL AUTHORITY.—The President is*
 19 *authorized to dispose of any interest in real property*
 20 *acquired for use by the Administrator under this sub-*
 21 *section by sale, exchange, donation, or otherwise and*
 22 *any such interest in real property shall not be subject*
 23 *to any of the provisions of section 120 except the no-*
 24 *tice provisions of section 120(h)(1). Any moneys re-*

1 ceived by the President pursuant to this paragraph
2 shall be deposited in the Fund.”.

3 **SEC. 505. REMOVAL ACTIONS.**

4 (a) *OBLIGATIONS FROM FUND.*—Section 104(c)(1) (42
5 *U.S.C. 9604(c)(1)*) is amended—

6 (1) in subparagraph (C), by striking “consistent
7 with the remedial action to be taken” and inserting
8 “not inconsistent with any remedial action that has
9 been selected or is anticipated at the time of any re-
10 moval action at the facility involved,”;

11 (2) by striking “\$2,000,000” and inserting
12 “\$4,000,000”; and

13 (3) by striking “12 months” and inserting “two
14 years”.

15 (b) *NONEMERGENCY REMOVALS.*—Section 120(e) (42
16 *U.S.C. 9620(e)*) is amended by adding at the end the follow-
17 ing new paragraph:

18 “(7) *NOTIFICATION OF AND CONCURRENCE FROM*
19 *THE ENVIRONMENTAL PROTECTION AGENCY OR STATE*
20 *FOR NONEMERGENCY REMOVAL ACTIONS.*—Before the
21 commencement of any nonemergency removal action
22 by a department, agency, or instrumentality of the
23 United States, such department, agency, or instru-
24 mentality shall—

1 “(A) *notify the Environmental Protection*
 2 *Agency or the State, as appropriate, of the*
 3 *planned removal action; and*

4 “(B) *except in a case in which the agency*
 5 *undertaking the action is the Environmental*
 6 *Protection Agency, obtain concurrence in the*
 7 *planned removal action from the Environmental*
 8 *Protection Agency or the State, as applicable.”.*

9 **SEC. 506. TRANSITION.**

10 (a) *EFFECTIVE DATE.*—*This title, and the amend-*
 11 *ments made by this title, shall become effective 180 days*
 12 *after the date of enactment of this Act. Remedies selected*
 13 *under the Comprehensive Environmental Response, Com-*
 14 *pensation, and Liability Act of 1980 (42 U.S.C. 9601 et*
 15 *seq.) following that effective date shall be selected as pro-*
 16 *vided in section 121(b) of such Act (as amended by section*
 17 *502) (42 U.S.C. 9621(b)) and subject to the Federal and*
 18 *State requirements specified in paragraphs (7) and (8) of*
 19 *section 121(d) of such Act (as amended by section*
 20 *501(a)(5)) (42 U.S.C. 9621(d)), except as provided in sub-*
 21 *section (b).*

22 (b) *CONTINUED EFFECTIVENESS OF REGULATIONS*
 23 *AND GUIDANCE.*—*Until promulgation of the national goals*
 24 *and the national risk protocol under section 121(d) of such*
 25 *Act, the President, in selecting such remedies, may continue*

1 *to rely on current regulations and guidance (in effect under*
 2 *such Act as of the date of enactment of this Act) with regard*
 3 *to acceptable risk levels and the conduct of risk assessments.*

4 *(c) PRIOR RECORDS OF DECISION.—*

5 *(1) REOPENINGS.—Nothing in this Act shall*
 6 *place upon the President an obligation to reopen a*
 7 *record of decision signed prior to the effective date of*
 8 *this title.*

9 *(2) CHANGES.—If, pursuant to section 117 of the*
 10 *Comprehensive Environmental Response, Compensa-*
 11 *tion, and Liability Act of 1980 (42 U.S.C. 9617), the*
 12 *President determines that a change to a record of de-*
 13 *cision signed prior to the effective date of this title is*
 14 *necessary, the President may apply the rules in effect*
 15 *under such Act at the time the original record of deci-*
 16 *sion was signed.*

17 ***TITLE VI—MISCELLANEOUS***

18 ***SEC. 601. INTERAGENCY AGREEMENTS AT MIXED OWNER-*** 19 ***SHIP AND MIXED RESPONSIBILITY FACILI-*** 20 ***TIES.***

21 *Section 120(e) (42 U.S.C. 9620(e)) is amended—*

22 *(1) in paragraph (4), by adding at the end the*
 23 *following new subparagraph:*

1 “(D) A provision allowing for the partici-
2 pation of other responsible parties in the re-
3 sponse action.”; and

4 (2) by inserting after paragraph (7) (as added
5 by section 505(b)) the following new paragraph:

6 “(8) *EXCEPTION TO REQUIRED ACTION.*—

7 “(A) *CONDITIONS.*—No department, agency,
8 or instrumentality of the United States that
9 owns or operates a facility over which the de-
10 partment, agency, or instrumentality exercises
11 no regulatory or other control over activities that
12 directly or indirectly resulted in a release or
13 threat of a release of a hazardous substance shall
14 be subject to the requirements of paragraphs (1)
15 through (7), other than subparagraphs (F) and
16 (G) of paragraph (5), to the extent that the de-
17 partment, agency, or instrumentality dem-
18 onstrates to the satisfaction of the Administrator
19 that—

20 “(i) no department, agency, or instru-
21 mentality was the primary or sole source or
22 cause of a release or threat of release of a
23 hazardous substance at the facility;

24 “(ii) the activities either directly or in-
25 directly resulting in a release or threat of a

1 *release of a hazardous substance at the facil-*
2 *ity were conducted pursuant to any of sec-*
3 *tions 2319 through 2329, section 2331, sec-*
4 *tions 2333 through 2337, or section 2344, of*
5 *the Revised Statutes (30 U.S.C. 22–24, 26–*
6 *30, 33–35, 37, 39–42, or 47) and occurred*
7 *before January 1, 1976; and*

8 “(iii) *the person or persons primarily*
9 *or solely responsible for such release or*
10 *threat of release are financially viable and*
11 *are capable of performing or financing all*
12 *or a portion of the response action at the fa-*
13 *cility.*

14 “(B) *APPLICATION.—*

15 “(i) *ENFORCEMENT.—If the conditions*
16 *listed in clauses (i) through (iii) of sub-*
17 *paragraph (A) are not met, the applicable*
18 *terms of this subsection apply to the depart-*
19 *ment, agency, or instrumentality of the*
20 *United States at the facility. Upon a deter-*
21 *mination by the Administrator that a de-*
22 *partment, agency, or instrumentality quali-*
23 *fies for the exception provided by this para-*
24 *graph to other provisions of this subsection,*
25 *the head of such department, agency, or in-*

1 *strumentality may exercise enforcement au-*
2 *thority under section 106 (in addition to*
3 *any other delegated authorities). To the ex-*
4 *tent a person who has been issued an order*
5 *under the authority of this paragraph seeks*
6 *reimbursement under section 106, the rel-*
7 *evant department, agency, or instrumentality,*
8 *and not the Fund, shall be the source*
9 *of any appropriate reimbursement.*

10 “(ii) *REMEDIAL INVESTIGATION AND*
11 *FEASIBILITY STUDY.*—*Unless the relevant*
12 *department, agency, or instrumentality has,*
13 *with the concurrence of the Administrator,*
14 *obtained or ensured the performance of a re-*
15 *medial investigation and feasibility study*
16 *by responsible parties pursuant to an order*
17 *or consent decree within 12 months after the*
18 *facility has been listed on the National Pri-*
19 *orities List, the exception provided by this*
20 *paragraph to other provisions of this sub-*
21 *section shall be void and the department,*
22 *agency, or instrumentality shall, in con-*
23 *sultation with the Administrator and ap-*
24 *propriate State authorities, commence a re-*
25 *medial investigation and feasibility study*

1 for such facility. If the Administrator deter-
 2 mines that the relevant department, agency,
 3 or instrumentality has failed to ensure,
 4 within 180 days after the issuance of the
 5 record of decision for the facility, the per-
 6 formance of a complete remedial action for
 7 the facility, such exception shall be void 30
 8 days after the determination, and the de-
 9 partment, agency, or instrumentality shall,
 10 in consultation with the Administrator and
 11 such authorities, conduct a remedial action
 12 consistent with the record of decision for the
 13 facility.”.

14 **SEC. 602. TRANSFERS OF UNCONTAMINATED PROPERTY.**

15 The first sentence of section 120(h)(4)(A) (42 U.S.C.
 16 9620(h)(4)(A)) is amended—

- 17 (1) by striking “stored for 1 year or more,”; and
- 18 (2) by striking the comma after “released”.

19 **SEC. 603. AGREEMENTS TO TRANSFER BY DEED.**

20 Section 120(h) (42 U.S.C. 9620(h)) is amended by
 21 adding at the end the following new paragraph:

22 “(6) AGREEMENTS TO TRANSFER BY DEED.—
 23 Nothing in this subsection shall be construed to pro-
 24 hibit the head of a department, agency, or instrumen-
 25 tality of the United States from entering into an

1 *agreement to transfer by deed real property or a facil-*
2 *ity prior to the entering of such deed, if the head of*
3 *the department, agency, or instrumentality has met*
4 *the requirements of paragraph (4).''.*

5 **SEC. 604. ALTERNATIVE OR INNOVATIVE TREATMENT TECH-**
6 **NOLOGIES.**

7 *Section 111(a) (42 U.S.C. 9611(a)) is amended by in-*
8 *serting after paragraph (6) the following new paragraph:*
9 *“(7) ALTERNATIVE OR INNOVATIVE TREATMENT*
10 *TECHNOLOGIES.—Payment of no more than 50 per-*
11 *cent of response costs incurred by a potentially liable*
12 *party in taking actions approved by the Adminis-*
13 *trator to achieve required levels of response under this*
14 *Act after employing 1 or more alternative or innova-*
15 *tive treatment technologies, as defined in section*
16 *311(b)(10), that fails to achieve a level of response re-*
17 *quired under this Act pursuant to an administrative*
18 *order or consent decree. The Administrator shall issue*
19 *guidance on the appropriate level of funding for re-*
20 *sponse activities using such alternative or innovative*
21 *treatment technologies that are necessary to achieve a*
22 *level of response required under this Act. The Admin-*
23 *istrator shall review and update such guidance, as*
24 *appropriate.’’.*

1 **SEC. 605. DEFINITIONS.**

2 (a) *IN GENERAL.*—Section 101 (42 U.S.C. 9601) is
3 amended—

4 (1) in paragraph (10)(H), by striking “subject
5 to” and inserting “in compliance with”;

6 (2) in paragraph (14), by adding at the end the
7 following new sentence: “The term includes methane,
8 but only when a response action undertaken to ad-
9 dress a release or threat of release of a hazardous sub-
10 stance (as otherwise defined in this paragraph) at a
11 landfill or similar site also addresses methane.”;

12 (3) in paragraph (20)—

13 (A) in clause (iii) of the first sentence of
14 subparagraph (A), by inserting “the United
15 States or” after “similar means to”;

16 (B) in subparagraph (D)—

17 (i) in the first sentence, by inserting
18 “the United States or” after “does not in-
19 clude”; and

20 (ii) in the second sentence—

21 (I) by inserting “any department,
22 agency, or instrumentality of the Unit-
23 ed States or” before “any State”; and

24 (II) by striking “such a” and in-
25 serting “such department, agency, or

1 *instrumentality of the United States*
2 *or”;* and

3 (C) by inserting after subparagraph (D) the
4 *following new subparagraph:*

5 “(E) *EXCLUSION OF UNITED STATES, CON-*
6 *SERVATOR, OR RECEIVER.—The term ‘owner or*
7 *operator’ shall not include the United States or*
8 *any department, agency, or instrumentality of*
9 *the United States, or a conservator or receiver*
10 *appointed by a department, agency, or instru-*
11 *mentality of the United States, if the United*
12 *States or the conservator or receiver meets both*
13 *of the following conditions:*

14 “(i) *AUTHORITY.—The United States,*
15 *conservator, or receiver acquired ownership*
16 *or control of a vessel or facility (or any*
17 *right or interest therein)—*

18 “(I) *in connection with the exer-*
19 *cise of receivership or conservatorship*
20 *authority or the liquidation or wind-*
21 *ing up of the affairs of any entity sub-*
22 *ject to a receivership or*
23 *conservatorship, including any subsidi-*
24 *ary thereof;*

1 “(II) in connection with the exer-
2 cise of any seizure or forfeiture author-
3 ity; or

4 “(III) pursuant to an Act of Con-
5 gress specifying the property to be ac-
6 quired.

7 “(ii) NONPARTICIPATION IN MANAGE-
8 MENT.—The United States, conservator, or
9 receiver does not participate in the manage-
10 ment of the vessel or facility operations that
11 result in a release or threat of release of
12 hazardous substances and complies with
13 such other requirements as the Adminis-
14 trator may set forth by regulation.”;

15 (4) in paragraph (23)—

16 (A) in the first sentence—

17 (i) by striking “terms” and inserting
18 “term”;

19 (ii) by striking “necessary” the first
20 place it appears and inserting “nec-
21 essarily”; and

22 (iii) by inserting “or combination of
23 such actions” after “environment, such ac-
24 tions”;

1 (B) in the second sentence, by striking “The
2 term” and inserting “Each term”; and

3 (C) by adding at the end the following new
4 sentence: “The term ‘remove’ or ‘removal’ is not
5 limited to emergency situations and includes ac-
6 tions to address future or potential exposures
7 and, if such actions are consistent with the re-
8 quirements of this Act, actions that obviate the
9 need for a remedial action at a site listed on the
10 National Priorities List by meeting the same re-
11 quirements as are applicable to remedial actions
12 under section 121.”;

13 (5) in paragraph (24), by adding at the end the
14 following new sentence: “The term includes operation
15 and maintenance for a facility.”;

16 (6) in paragraph (25)—

17 (A) by striking “terms” the first place it
18 appears and inserting “term”;

19 (B) by striking “action;, all” and inserting
20 “action. All”; and

21 (C) by striking “related thereto” and insert-
22 ing “(including the services of attorneys and ex-
23 pert witnesses) and oversight activities related to
24 the activities described in paragraph (23) or

1 (24), as appropriate, if the activities are under-
2 taken by the President”;

3 (7) in paragraph (29), by inserting before the pe-
4 riod the following: “, except that the term ‘hazardous
5 substance’ shall be substituted for the term ‘hazardous
6 waste’ in the definitions of ‘disposal’ and ‘treat-
7 ment’ ”;

8 (8) in paragraph (33), by striking “; except that
9 the” and inserting “. The”;

10 (9) in paragraph (35)—

11 (A) in subparagraph (A)—

12 (i) by striking clause (iii); and

13 (ii) in the matter preceding clause (i),
14 by striking “clause (i), (ii), or (iii)” and
15 inserting “clause (i) or (ii)”;

16 (B) by striking subparagraph (B) and in-
17 serting the following new subparagraph:

18 “(B) KNOWLEDGE OF INQUIRY REQUIRE-
19 MENT.—

20 “(i) IN GENERAL.—To establish that
21 the defendant had no reason to know, as
22 provided in subparagraph (A)(i), the de-
23 fendant must have undertaken, at the time
24 of the acquisition, all appropriate inquiry
25 into the previous ownership and uses of the

1 facility and its real property in accordance
2 with generally accepted good commercial
3 and customary standards and practices.
4 For the purposes of the preceding sentence
5 and until the Administrator issues or des-
6 ignates standards and practices as provided
7 in clause (ii), the court shall take into ac-
8 count any specialized knowledge or experi-
9 ence on the part of the defendant, the rela-
10 tionship of the purchase price to the value
11 of the property if uncontaminated, com-
12 monly known or reasonably ascertainable
13 information about the property, the obvious-
14 ness of the presence or likely presence of
15 contamination at the property, and the
16 ability to detect such contamination by ap-
17 propriate investigation.

18 “(ii) *RULE.*—Within 1 year after the
19 date of enactment of the Superfund Reform
20 Act of 1994, the Administrator shall, by
21 rule, issue standards and practices or des-
22 ignate standards and practices promulgated
23 or developed by others, that satisfy the re-
24 quirements of this subparagraph. In issuing
25 or designating such standards and prac-

1 *tices, the Administrator shall consider each*
2 *of the following:*

3 *“(I) Conduct of an inquiry by an*
4 *environmental professional.*

5 *“(II) Inclusion of interviews with*
6 *past and present owners, operators,*
7 *and occupants of the facility and its*
8 *real property for the purpose of gather-*
9 *ing information regarding the poten-*
10 *tial for contamination at the facility*
11 *and its real property.*

12 *“(III) Inclusion of a review of*
13 *historical sources, such as chain of title*
14 *documents, aerial photographs, build-*
15 *ing department records, and land use*
16 *records, to determine previous uses and*
17 *occupancies of the real property since*
18 *it was first developed.*

19 *“(IV) Inclusion of a search for re-*
20 *corded environmental cleanup liens,*
21 *filed under Federal, State, or local law,*
22 *against the facility or its real prop-*
23 *erty.*

24 *“(V) Inclusion of a review of Fed-*
25 *eral, State, and local government*

1 *records (such as waste disposal*
2 *records), underground storage tank*
3 *records, and hazardous waste handling,*
4 *generation, treatment, disposal, and*
5 *spill records, concerning contamination*
6 *at or near the facility or its real prop-*
7 *erty.*

8 *“(VI) Inclusion of a visual inspec-*
9 *tion of the facility and its real prop-*
10 *erty and of adjoining properties.*

11 *“(VII) Any specialized knowledge*
12 *or experience on the part of the defend-*
13 *ant.*

14 *“(VIII) The relationship of the*
15 *purchase price to the value of the prop-*
16 *erty if uncontaminated.*

17 *“(IX) Commonly known or rea-*
18 *sonably ascertainable information*
19 *about the property.*

20 *“(X) The obviousness of the pres-*
21 *ence or likely presence of contamina-*
22 *tion at the property, and the ability to*
23 *detect such contamination by appro-*
24 *priate investigation.*

1 “(iii) *SITE INSPECTION AND TITLE*
 2 *SEARCH.*—*In the case of property for resi-*
 3 *dential use or other similar use purchased*
 4 *by a nongovernmental or noncommercial*
 5 *entity, a site inspection and title search*
 6 *that reveal no basis for further investigation*
 7 *satisfy the requirements of this subpara-*
 8 *graph.*”; and

9 (10) by adding at the end the following new
 10 *paragraphs:*

11 “(39) *BONA FIDE PROSPECTIVE PURCHASER.*—
 12 *The term ‘bona fide prospective purchaser’ means a*
 13 *person who acquires ownership of a facility after the*
 14 *date of enactment of the Superfund Reform Act of*
 15 *1994, or a tenant of such a person, who can establish*
 16 *each of the following by a preponderance of the evi-*
 17 *dence:*

18 “(A) *DISPOSAL PRIOR TO ACQUISITION.*—
 19 *All active disposal of hazardous substances at the*
 20 *facility occurred before that person acquired the*
 21 *facility.*

22 “(B) *INQUIRY.*—*The person made all ap-*
 23 *propriate inquiry into the previous ownership*
 24 *and uses of the facility and its real property in*
 25 *accordance with generally accepted good commer-*

1 *cial and customary standards and practices. The*
2 *standards and practices issued by the Adminis-*
3 *trator pursuant to paragraph (35)(B)(ii) shall*
4 *satisfy the requirements of this subparagraph. In*
5 *the case of property for residential or other simi-*
6 *lar use purchased by a nongovernmental or non-*
7 *commercial entity, a site inspection and title*
8 *search that reveal no basis for further investiga-*
9 *tion satisfy the requirements of this subpara-*
10 *graph.*

11 *“(C) NOTICES.—The person provided all le-*
12 *gally required notices with respect to the discov-*
13 *ery or release of any hazardous substances at the*
14 *facility.*

15 *“(D) CARE.—The person exercised appro-*
16 *priate care with respect to hazardous substances*
17 *found at the facility by taking reasonable steps*
18 *to stop on-going releases, prevent threatened fu-*
19 *ture releases of hazardous substances, and pre-*
20 *vent or limit human or natural resource expo-*
21 *sure to hazardous substances previously released*
22 *into the environment.*

23 *“(E) COOPERATION, ASSISTANCE, AND AC-*
24 *CESS.—The person provides full cooperation, as-*
25 *sistance, and facility access to those persons that*

1 are responsible for response actions at the facil-
2 ity, including the cooperation and access nec-
3 essary for the installation, integrity, operation,
4 and maintenance of any complete or partial re-
5 sponse action at the facility.

6 “(F) *RELATIONSHIP*.—The person is not
7 liable, or is not affiliated with any other person
8 that is liable, for response costs at the facility,
9 through any direct or indirect familial relation-
10 ship, or any contractual, corporate, or financial
11 relationship other than that created by the in-
12 struments by which title to the facility is con-
13 veyed or financed.

14 “(40) *COMMUNITY*.—The term ‘community’, ex-
15 cept as provided in paragraph (36), used with respect
16 to a facility and without further modification, means
17 a political subdivision of a State, or a combination
18 of such subdivisions, that contains, borders on, or is
19 significantly affected by the facility, in a case of a fa-
20 cility that is—

21 “(A) listed or proposed for listing on the
22 National Priorities List; or

23 “(B) listed on a State Registry.

24 “(41) *MUNICIPAL SOLID WASTE*.—The term ‘mu-
25 nicipal solid waste’ means all waste materials gen-

1 *erated by households, including single and multifam-*
2 *ily residences, and hotels and motels. The term also*
3 *includes waste materials generated by commercial, in-*
4 *stitutional, and industrial sources, to the extent such*
5 *wastes—*

6 *“(A) are essentially the same as waste nor-*
7 *mally generated by households; or*

8 *“(B) are collected and disposed of with*
9 *other municipal solid waste or sewage sludge as*
10 *part of normal municipal solid waste collection*
11 *services, and, regardless of when generated,*
12 *would be considered conditionally exempt small*
13 *quantity generator waste under section 3001(d)*
14 *of the Solid Waste Disposal Act (42 U.S.C.*
15 *6921(d)).*

16 *Examples of municipal solid waste include food and*
17 *yard waste, paper, clothing, appliances, consumer*
18 *product packaging, disposable diapers, office supplies,*
19 *cosmetics, glass and metal food containers, elementary*
20 *or secondary school science laboratory waste, and*
21 *household hazardous waste. The term does not include*
22 *combustion ash generated by resource recovery facili-*
23 *ties or municipal incinerators, or waste from manu-*
24 *facturing or processing (including pollution control)*

1 *operations not essentially the same as waste normally*
2 *generated by households.*

3 “(42) *MUNICIPALITY.*—The term ‘municipality’
4 *means a political subdivision of a State, including a*
5 *city, county, village, town, township, borough, parish,*
6 *school, school district, sanitation district, water dis-*
7 *trict, or other public entity performing local govern-*
8 *mental functions. The term also includes a natural*
9 *person acting in the capacity of an official, employee,*
10 *or agent of any entity referred to in the preceding*
11 *sentence in the performance of governmental func-*
12 *tions.*

13 “(43) *NATIONAL PRIORITIES LIST.*—The term
14 *‘National Priorities List’ means the list established*
15 *under the national contingency plan in accordance*
16 *with section 105(a)(8).*

17 “(44) *OWNER, OPERATOR, OR LESSEE OF RESI-*
18 *DENTIAL PROPERTY.*—The term ‘owner, operator, or

19 *lessee of residential property’ means a person who*
20 *owns, operates, manages, or leases residential prop-*
21 *erty and who uses or allows the use of the residential*
22 *property exclusively for residential purposes. The*
23 *term ‘residential property’ means single or multifam-*
24 *ily residences, including accessory land, buildings, or*

1 *improvements incidental to such dwellings, that are*
2 *exclusively for residential use.*

3 “(45) *POTENTIALLY RESPONSIBLE PARTY.*—The
4 *term ‘potentially responsible party’ means a poten-*
5 *tially responsible party referred to in section*
6 *104(a)(1).*

7 “(46) *QUALIFIED HOUSEHOLD HAZARDOUS*
8 *WASTE COLLECTION PROGRAM.*—The term ‘qualified
9 *household hazardous waste collection program’ means*
10 *a program established by an entity of the Federal*
11 *Government, a State, a municipality, or an Indian*
12 *tribe that provides, at a minimum, for semiannual*
13 *collection of household hazardous wastes at accessible,*
14 *well-publicized collection points within the relevant*
15 *jurisdiction.*

16 “(47) *RECORD OF DECISION.*—The term ‘record
17 *of decision’ means a record of decision referred to in*
18 *section 117(e).*

19 “(48) *REMEDIAL ACTION AND FEASIBILITY*
20 *STUDY.*—The terms ‘remedial action’ and ‘feasibility
21 *study’ mean the remedial action and the feasibility*
22 *study, respectively, referred to in section 104(a)(1).*

23 “(49) *SEWAGE SLUDGE.*—The term ‘sewage
24 *sludge’ means solid, semisolid, or liquid residue re-*
25 *moved during the treatment of municipal waste*

1 *water, domestic sewage, or other waste water at or by*
2 *publicly owned or federally owned treatment works.*

3 “(50) *SITE CHARACTERIZATION*.—The term ‘site
4 *characterization*’ means an investigation that deter-
5 *mines the nature and extent of a release or potential*
6 *release of a hazardous substance, pollutant, or con-*
7 *taminant, and that includes an onsite evaluation and*
8 *sufficient testing, sampling, and other field data gath-*
9 *ering activities to analyze whether there has been a*
10 *release or threat of a release of a hazardous substance,*
11 *pollutant, or contaminant, and the health and envi-*
12 *ronmental risks posed by such a release or threat of*
13 *release. The investigation also may include review of*
14 *existing information (available at the time of the re-*
15 *view), an offsite evaluation, or other measures that*
16 *the Administrator considers appropriate.*

17 “(51) *SMALL BUSINESS*.—The term ‘small busi-
18 *ness*’ means any business entity that employs no more
19 *than 100 individuals and is a ‘small business con-*
20 *cern’ as defined under the Small Business Act (15*
21 *U.S.C. 631 et seq.).*

22 “(52) *SMALL NONPROFIT ORGANIZATION*.—The
23 *term ‘small nonprofit organization’ means any orga-*
24 *nization that, at the time of disposal, did not distrib-*
25 *ute any part of its income or profit to its members,*

1 *directors, or officers, employed no more than 100 paid*
 2 *individuals at the involved chapter, office, or depart-*
 3 *ment, and was recognized as an organization de-*
 4 *scribed in section 501(c) of the Internal Revenue Code*
 5 *of 1986 and exempt from taxation under section*
 6 *501(a) of such Code.*

7 “(53) *STATE REGISTRY*.—The term ‘*State Reg-*
 8 *istry*’ means a list described in section 105(a)(8)(C).”.

9 (b) *CONFORMING AMENDMENTS*.—

10 (1) *EPA*.—

11 (A) *Section 104(i) (42 U.S.C. 9604(i)) is*
 12 *amended by striking “the Administrator of*
 13 *EPA” each place it appears and inserting “the*
 14 *Administrator”.*

15 (B) *Section 104(i)(2)(A) (42 U.S.C.*
 16 *9604(i)(2)(A)) is amended by striking*
 17 *“(EPA)”.*

18 (C) *Section 301(h)(2) (42 U.S.C.*
 19 *9651(h)(2)) is amended by striking “EPA’s ac-*
 20 *tivities” and inserting “activities of the Envi-*
 21 *ronmental Protection Agency”.*

22 (2) *NPL*.—*Section 113(g)(1) (42 U.S.C.*
 23 *9613(g)(1)) is amended by striking “(NPL)”.*

24 (3) *RI/FS*.—

1 (A) *Except as provided in subparagraph*
 2 (B), *section 104(a)(1) (42 U.S.C. 9604(a)(1)) is*
 3 *amended by striking “RI/FS” each place it ap-*
 4 *pears and inserting “remedial investigation and*
 5 *feasibility study”.*

6 (B) *Sections 104(a)(1) and 116(d) (42*
 7 *U.S.C. 9604(a)(1) and 9616(d)) are amended by*
 8 *striking “(RI/FS)”.*

9 (4) *RELATIONSHIP OF OPERATION AND MAINTENANCE TO REMEDIAL ACTION.—Section 104(c)(6) (42*
 10 *U.S.C. 9604(c)(6)) is amended by striking the second*
 11 *and third sentences.*

13 **SEC. 606. CONFORMING AMENDMENT.**

14 *Section 126(a) (42 U.S.C. 9626(a)) (as amended by*
 15 *section 205(b)) is further amended by striking “authorities*
 16 *and” and inserting “authorities),”.*

17 **SEC. 607. RESPONSE CLAIMS PROCEDURES.**

18 (a) *AMENDMENT OF SECTION 111.—Section 111(a)(2)*
 19 *(42 U.S.C. 9611(a)(2)) is amended by inserting after*
 20 *“under said plan” the following: “, reasonable in amount*
 21 *based on open and free competition or fair market value*
 22 *for similar available goods and services,”.*

23 (b) *AMENDMENT OF SECTION 112.—Section 112(a) (42*
 24 *U.S.C. 9612(a)) is amended—*

1 (1) *in the first sentence, by inserting after “un-*
 2 *less such claim is” the following: “(1) accompanied by*
 3 *an audit prepared by an independent, certified public*
 4 *accountant, and (2)”*; and

5 (2) *by inserting after the first sentence the fol-*
 6 *lowing new sentence: “The Administrator reserves the*
 7 *right to review such audits to determine that the costs*
 8 *for which the claimant is seeking reimbursement are*
 9 *consistent with section 111(a) and, where necessary,*
 10 *withhold claims or a portion thereof that are incon-*
 11 *sistent with section 111(a).”*.

12 **SEC. 608. SMALL BUSINESS OMBUDSMAN.**

13 *The Administrator of the Environmental Protection*
 14 *Agency shall establish a small business Superfund assist-*
 15 *ance section within the small business ombudsman office*
 16 *of the Environmental Protection Agency. This section*
 17 *shall—*

18 (1) *act as a clearinghouse of information for*
 19 *small businesses concerning the Comprehensive Envi-*
 20 *ronmental Response, Compensation, and Liability*
 21 *Act of 1980 (42 U.S.C. 9601 et seq.), consisting of*
 22 *materials comprehensible to the general public and*
 23 *including information concerning the allocation proc-*
 24 *ess described in section 129 of such Act (as added by*
 25 *section 409), requirements and procedures for expe-*

1 *dited settlements under section 122(g)(1) of such Act*
 2 *(42 U.S.C. 9622(g)(1)), de minimis and de micromis*
 3 *status, and ability-to-pay procedures;*

4 *(2) provide general advice and assistance to*
 5 *small businesses as to the questions and problems of*
 6 *the businesses concerning the allocation and settle-*
 7 *ment processes, except that the advice and assistance*
 8 *shall not include any legal advice as to liability or*
 9 *any other legal representation and the ombudsman*
 10 *shall not participate in the allocation process; and*

11 *(3) develop proposals and make recommenda-*
 12 *tions for changes in policies and activities of the En-*
 13 *vironmental Protection Agency that would better ful-*
 14 *fill the goals of title IV and the amendments made by*
 15 *such title in ensuring equitable, simplified, and expe-*
 16 *dited allocations and settlements for small businesses.*

17 **SEC. 609. CONSIDERATION OF LOCAL GOVERNMENT CLEAN-**
 18 **UP PRIORITIES IN ALLOCATION OF OVER-**
 19 **SIGHT RESOURCES.**

20 *Section 104(c)(2) (42 U.S.C. 9604(c)(2)) is amended—*

21 *(1) by striking “(2) The” and inserting the fol-*
 22 *lowing:*

23 *“(2) DETERMINATION OF APPROPRIATE REME-*
 24 *DIAL ACTION.—*

25 *“(A) IN GENERAL.—The”; and*

1 (2) by adding at the end the following new sub-
2 paragraph:

3 “(B) *PRIORITIES.*—In setting priorities for
4 scheduling work and allocating oversight re-
5 sources for a remedial action at a facility at
6 which a potentially responsible party that is a
7 State or local government proposes to carry out
8 the remedial action (or a portion thereof), the
9 Administrator should give higher priority to
10 such remedial action (or portion thereof) if the
11 State or local government demonstrates that the
12 remedial action—

13 “(i) will have a public benefit; and

14 “(ii) will result in the property on or
15 adjacent to the facility being returned to
16 productive use.

17 A private potentially responsible party may re-
18 quest similar consideration, in the Administra-
19 tor’s discretion. Nothing in this subparagraph
20 shall affect the responsibility of the Adminis-
21 trator to schedule and oversee the conduct of re-
22 medial action so as to ensure protection of
23 human health and the environment.”.

1 **SEC. 610. SEVERABILITY.**

2 *Section 113 (42 U.S.C. 9613) is amended by adding*
3 *at the end the following new subsection:*

4 *“(m) SEVERABILITY.—If any provision of this Act, an*
5 *amendment made by this Act, or the application of such*
6 *provision or amendment to any person or circumstance is*
7 *held to be unconstitutional, the remainder of this Act, the*
8 *amendments made by this Act, and the application of the*
9 *provisions of such to any person or circumstance shall not*
10 *be affected thereby.”.*

11 **SEC. 611. RESULTS-ORIENTED CLEANUPS.**

12 *Section 105(a) (42 U.S.C. 9605(a)) (as amended by*
13 *section 103(a)(2)) is further amended—*

14 *(1) in paragraph (10), by striking “and” the last*
15 *place it appears;*

16 *(2) in paragraph (11), by striking the period at*
17 *the end of the paragraph and inserting “; and”; and*

18 *(3) by inserting after paragraph (11) the follow-*
19 *ing:*

20 *“(12) alternative procedures for conducting re-*
21 *sponse measures, including remedial investigations,*
22 *feasibility studies, remedial designs, and remedial ac-*
23 *tions, which procedures shall—*

24 *“(A) utilize a results-oriented approach in*
25 *order to minimize the time required to conduct*
26 *response measures, and reduce the potential for*

1 *exposure to hazardous substances, in an efficient,*
 2 *timely, and cost-effective manner; and*

3 *“(B) be conducted in accordance with speci-*
 4 *fied methods and criteria, including directives,*
 5 *standards, and time limits, for the implementa-*
 6 *tion of the alternative procedures.*

7 *The national hazardous substance response plan shall be*
 8 *amended within 180 days after the date of enactment of*
 9 *the Superfund Reform Act of 1994 to include procedures*
 10 *required by paragraph (12), after notice and opportunity*
 11 *for public comment. Procedures described in paragraph*
 12 *(12) shall be subject to the requirements of sections 117, 120,*
 13 *and 121, and any other provision of this Act in the same*
 14 *manner and to the same degree as these sections and provi-*
 15 *sions apply to such response measures.”.*

16 **SEC. 612. INNOVATIVE TECHNOLOGIES FOR REMEDIAL AC-**
 17 **TION AT FEDERAL FACILITIES.**

18 *(a) IN GENERAL.—Section 311 (42 U.S.C. 9660) is*
 19 *amended by adding at the end the following new subsection:*

20 *“(h) FEDERAL FACILITIES.—*

21 *“(1) DESIGNATION.—The President may des-*
 22 *ignate a facility that is owned or operated by any de-*
 23 *partment, agency, or instrumentality of the United*
 24 *States, and that is listed or proposed for listing on*
 25 *the National Priorities List, to facilitate the research,*

1 *development, and application of innovative tech-*
2 *nologies for remedial action at the facility.*

3 “(2) *USE OF FACILITIES.*—Such a facility shall
4 *be made available to Federal departments and agen-*
5 *cies, State departments and agencies, and public and*
6 *private instrumentalities, to carry out activities de-*
7 *scribed in paragraph (1). The Administrator shall co-*
8 *ordinate the use of the facilities with the departments,*
9 *agencies, and instrumentalities of the United States,*
10 *and shall have the right to approve or deny the use*
11 *of a particular innovative technology for remedial ac-*
12 *tion at any such facility.*

13 “(3) *CONSIDERATIONS.*—In considering whether
14 *to permit the application of a particular innovative*
15 *technology for remedial activity at such a facility, the*
16 *Administrator shall evaluate the schedules and pen-*
17 *alties applicable to the facility under any agreement*
18 *or order entered into pursuant to section 120. If, after*
19 *such evaluation, the Administrator determines that*
20 *there is a need to amend any agreement or order en-*
21 *tered into pursuant to section 120, the Administrator*
22 *shall comply with all provisions of the agreement or*
23 *order, respectively, relating to the amendment of such*
24 *agreement or order, respectively.”.*

1 (b) *REPORT.*—Section 311(e) (42 U.S.C. 9660(e)) is
2 amended—

3 (1) by striking “At the time” and inserting the
4 following:

5 “(1) *IN GENERAL.*—At the time”; and

6 (2) by adding at the end the following:

7 “(2) *ADDITIONAL INFORMATION.*—The report
8 shall also include information on—

9 “(A) the use of facilities described in sub-
10 section (h)(1) for the research, development, and
11 application of innovative technologies for reme-
12 dial activity, as authorized under subsection (h);
13 and

14 “(B) the use of the Fund to pay for the re-
15 sponse costs at facilities that fail to meet the re-
16 quirements of section 121 due to the application
17 of such innovative technologies under subsection
18 (h).”.

19 **SEC. 613. NOTIFICATION.**

20 Section 103 (42 U.S.C. 9603) is amended by adding
21 at the end the following:

22 “(g) *NOTIFICATION OF LISTING ON NATIONAL PRIOR-*
23 *ITIES LIST.*—

24 “(1) *REQUIREMENT.*—Any owner or operator of
25 a facility that is—

1 “(A) listed on the National Priorities List;
2 and

3 “(B) receiving for treatment or disposal
4 hazardous waste generated offsite of such facility;
5 shall notify any person who arranges for treatment or
6 disposal, or arranges with a transporter for transport
7 for treatment or disposal, of such waste at such facil-
8 ity, that the facility is listed on the National Prior-
9 ities List.

10 “(2) PROHIBITION ON DEFENSE.—Lack of notifi-
11 cation described in paragraph (1) shall not be a de-
12 fense to liability under section 107.

13 “(3) TIMING.—The owner or operator shall pro-
14 vide the notification before accepting the hazardous
15 waste at the facility.

16 “(4) DEFINITION.—As used in this subsection,
17 the term ‘hazardous waste’ has the meaning given the
18 term in section 1004(5) of the Solid Waste Disposal
19 Act (42 U.S.C. 6903(5)).”.

20 **SEC. 614. CERTIFICATION OF ENVIRONMENTAL TRAINING**
21 **AND CERTIFICATION ORGANIZATIONS.**

22 (a) GUIDELINES.—

23 (1) IN GENERAL.—Not later than 2 years after
24 the date of enactment of this Act, the Administrator
25 shall, after considering the recommendations submit-

1 *ted under subsection (b)(4), publish guidelines for a*
 2 *model State program for organizations that train and*
 3 *certify individuals to perform phase I environmental*
 4 *site assessments.*

5 (2) *CONTENTS.—The guidelines published under*
 6 *paragraph (1) may include minimum standards re-*
 7 *lating to—*

8 (A) *formal environmental training;*

9 (B) *continuing environmental education;*

10 (C) *environmental certification and testing*
 11 *procedures;*

12 (D) *revocation and disciplinary procedures;*

13 (E) *establishment of a code of ethics;*

14 (F) *consumer education;*

15 (G) *certification renewal procedures; and*

16 (H) *annual reporting of program activities.*

17 (b) *ESTABLISHMENT OF ENVIRONMENTAL CERTIFI-*
 18 *CATION BOARD.—*

19 (1) *IN GENERAL.—Not later than 60 days after*
 20 *the date of enactment of this Act, the Administrator*
 21 *shall establish a certification advisory board to be*
 22 *known as the “Environmental Certification Board”.*

23 (2) *MEMBERS.—The Board shall consist of not*
 24 *fewer than 6 members, appointed by the Adminis-*
 25 *trator, who have demonstrated knowledge in the envi-*

1 *ronmental field. The Board shall include representa-*
2 *tives from the Environmental Protection Agency, en-*
3 *vironmental interest organizations, the chemical man-*
4 *ufacturing industry, the environmental consulting*
5 *service industry, the insurance industry, and the*
6 *banking and investment industry, and other appro-*
7 *priate representatives with knowledge in the environ-*
8 *mental field.*

9 (3) *CHAIRPERSON.—The Board shall appoint 1*
10 *member to serve as Chairperson of the Board to exer-*
11 *cise the executive and administrative functions of the*
12 *Board.*

13 (4) *DUTIES.—Not later than 180 days after the*
14 *date of enactment of this Act, the Board shall submit*
15 *recommendations to the Administrator regarding the*
16 *guidelines described in subsection (a) that shall in-*
17 *clude the minimum standards described in subsection*
18 *(a)(2).*

19 (5) *COMPENSATION.—Notwithstanding section*
20 *1342 of title 31, United States Code, each member of*
21 *the Board shall serve without compensation in addi-*
22 *tion to any compensation received for the services of*
23 *the member as an officer or employee of the United*
24 *States.*

1 (6) *TRAVEL EXPENSES.*—*The members of the*
2 *Board shall be allowed travel expenses, including per*
3 *diem in lieu of subsistence, at rates authorized for*
4 *employees of agencies under subchapter I of chapter*
5 *57 of title 5, United States Code, while away from the*
6 *homes or regular places of business of the members in*
7 *the performance of services for the Board.*

8 (7) *FACILITIES, SUPPLIES, AND PERSONNEL.*—

9 (A) *IN GENERAL.*—*Upon the request of the*
10 *Board, the Administrator shall provide to the*
11 *Board the facilities, supplies, and personnel nec-*
12 *essary for the Board to carry out the responsibil-*
13 *ities of the Board under this subsection.*

14 (B) *DETAILS.*—*In the case of a detail of a*
15 *Federal Government employee under subpara-*
16 *graph (A), the employee may be detailed to the*
17 *Board without reimbursement. The detail shall*
18 *be without interruption or loss of civil service*
19 *status or privilege.*

20 (C) *HEARINGS.*—*The Board may hold such*
21 *hearings, sit and act at such times and places,*
22 *take such testimony, and receive such evidence as*
23 *the Board considers advisable to carry out this*
24 *paragraph.*

1 (D) *INFORMATION FROM FEDERAL AGEN-*
2 *CIES.—The Board may secure directly from any*
3 *Federal department or agency such information*
4 *as the Board considers necessary to carry out*
5 *this paragraph. Upon request of the Board, the*
6 *head of the department or agency shall furnish*
7 *the information to the Board.*

8 (E) *POSTAL SERVICES.—The Board may*
9 *use the United States mails in the same manner*
10 *and under the same conditions as other depart-*
11 *ments and agencies of the Federal Government.*

12 (8) *TERMINATION.—The Board shall terminate 2*
13 *years after the date of enactment of this Act.*

14 (c) *STATE ADOPTION OF REGULATIONS.—*

15 (1) *IN GENERAL.—After the publication of the*
16 *guidelines under subsection (a), any State may adopt*
17 *regulations identical (except as provided in para-*
18 *graph (2)) to the guidelines.*

19 (2) *CONSTRUCTION.—Nothing in this section*
20 *shall preclude any State from issuing and enforcing,*
21 *at any time, additional or more stringent guidelines*
22 *and regulations regarding the training and certifi-*
23 *cation of persons who perform phase I environmental*
24 *site assessments.*

25 (d) *DETERMINATION OF COMPLIANCE.—*

1 (1) *SUBMISSION OF INFORMATION.*—If a State
2 adopts the guidelines issued by the Administrator
3 under subsection (a), any organization located in the
4 State that seeks to obtain a determination of compli-
5 ance with the regulations adopted under subsection
6 (c) may submit to the State information documenting
7 the compliance of the organization.

8 (2) *DETERMINATION.*—The State shall make the
9 determination of the compliance or noncompliance of
10 the organization with the regulations.

11 (3) *APPROVAL.*—As soon as practicable after a
12 determination of compliance has been made under
13 paragraph (2), the State shall issue notice in writing
14 to the organization, indicating that the organization
15 is an approved phase I environmental training and
16 certification organization in accordance with this sec-
17 tion. The approval shall be valid for a term estab-
18 lished by the State, but not longer than 5 years.

19 (4) *FEE.*—A State may charge a reasonable fee,
20 equal to the cost of determining compliance under
21 paragraph (2), to each organization that applies for
22 the determination. Each such fee shall be listed as
23 part of the regulations adopted under subsection (c).

24 (5) *ISSUANCE OF DEGREE.*—Any organization
25 that has received notice of a determination of compli-

1 *ance from a State under paragraph (3) may issue, to*
2 *any individual who has completed to the satisfaction*
3 *of the organization the curriculum and training pro-*
4 *gram of the organization, a diploma, certification, or*
5 *other form of degree signifying that the recipient is a*
6 *certified phase I environmental professional qualified*
7 *to perform phase I environmental site assessments.*

8 (6) *REVIEW.*—*A State may periodically, or upon*
9 *expiration of an approval under paragraph (3), re-*
10 *view the program, curriculum, facilities, and training*
11 *methods of an organization referred to in paragraph*
12 *(5) to determine if the organization continues to com-*
13 *ply with the regulations adopted under subsection (c).*

14 (e) *DEFINITIONS.*—*As used in this section:*

15 (1) *ADMINISTRATOR.*—*The term “Adminis-*
16 *trator” means the Administrator of the Environ-*
17 *mental Protection Agency.*

18 (2) *APPROVED PHASE I ENVIRONMENTAL TRAIN-*
19 *ING AND CERTIFICATION ORGANIZATION.*—*The term*
20 *“approved phase I environmental training and cer-*
21 *tification organization” means an organization that*
22 *trains and certifies individuals to perform phase I*
23 *environmental site assessments whose curriculum,*
24 *program, facilities, training, and testing methods*

1 *comply with the regulations adopted by a State under*
2 *this section.*

3 (3) *BOARD.*—*The term “Board” means the Envi-*
4 *ronmental Certification Board established under sub-*
5 *section (b)(1).*

6 (4) *CERTIFIED PHASE I ENVIRONMENTAL PRO-*
7 *FESSIONAL.*—*The term “certified phase I environ-*
8 *mental professional” means any person who receives*
9 *certification to perform phase I environmental site as-*
10 *sessments from an approved environmental training*
11 *and certification organization in accordance with this*
12 *section.*

13 (5) *PHASE I ENVIRONMENTAL SITE ASSESS-*
14 *MENT.*—*The term “phase I environmental site assess-*
15 *ment” means the process by which a person or entity*
16 *seeks to determine whether a particular parcel of real*
17 *property is subject to recognized environmental condi-*
18 *tions that indicate the presence or likely presence of*
19 *a hazardous substance or petroleum product on the*
20 *property under conditions that indicate an existing*
21 *release, a past release, or a material threat of a re-*
22 *lease into structures on the property, or into the*
23 *ground, ground water, or surface water of the prop-*
24 *erty.*

1 **SEC. 615. SENSE OF THE COMMITTEE CONCERNING OFF-**
 2 **SETS FROM THE CORPORATE ENVIRON-**
 3 **MENTAL INCOME TAX TO PAY FOR WELFARE**
 4 **REFORM.**

5 (a) *FINDINGS.*—*The Committee on Environment and*
 6 *Public Works finds that—*

7 (1) *real welfare reform means spending less tax-*
 8 *payer money, not more;*

9 (2) *real welfare reform means putting people to*
 10 *work in exchange for benefits;*

11 (3) *real welfare reform means concentrating ef-*
 12 *forts to reduce illegitimacy; and*

13 (4) *real welfare reform means giving the States*
 14 *maximum flexibility to design their own solutions.*

15 (b) *SENSE OF THE COMMITTEE.*—*It is the sense of the*
 16 *Committee on Environment and Public Works of the Senate*
 17 *that revenues resulting from the extension of the corporate*
 18 *environmental income tax under section 59A of the Internal*
 19 *Revenue Code of 1986 should not be used to offset expendi-*
 20 *tures incurred as a result of welfare reform.*

21 **TITLE VII—FUNDING**

22 **SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

23 *Section 111(a) (42 U.S.C. 9611(a)) is amended by*
 24 *striking “\$8,500,000,000 for the 5-year period beginning on*
 25 *the date of enactment of the Superfund Amendments and*
 26 *Reauthorization Act of 1986, and not more than*

1 \$5,100,000,000 for the period commencing October 1, 1991,
2 and ending September 30, 1994” and inserting
3 “\$9,600,000,000 for the period commencing October 1,
4 1994, and ending September 30, 1999”.

5 **SEC. 702. ORPHAN SHARE FUNDING.**

6 Section 111(a) (42 U.S.C. 9611(a)) (as amended by
7 section 607(a)) is further amended by inserting after para-
8 graph (7) the following new paragraph:

9 “(8) ORPHAN SHARE FUNDING.—Payment of or-
10 phan shares pursuant to section 129.”.

11 **SEC. 703. DEPARTMENT OF HEALTH AND HUMAN SERVICES.**

12 Subsection (m) of section 111 (42 U.S.C. 9611(m)) is
13 amended to read as follows:

14 “(m) HEALTH AUTHORITIES.—There are authorized
15 to be appropriated from the Fund to the Secretary of Health
16 and Human Services to be used for the purposes of carrying
17 out the activities described in subsection (c)(4) and the ac-
18 tivities described in section 104(i), \$50,000,000 for each of
19 fiscal years 1995 through 1999. Funds appropriated under
20 this subsection for a fiscal year, but not obligated by the
21 end of the fiscal year, shall be returned to the Fund.”.

22 **SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND**
23 **DEMONSTRATION PROGRAMS.**

24 Subsection (n) of section 111 (42 U.S.C. 9611(n)) is
25 amended to read as follows:

1 “(n) *LIMITATIONS ON RESEARCH, DEVELOPMENT, AND*
 2 *DEMONSTRATION PROGRAMS.*—

3 “(1) *ALTERNATIVE OR INNOVATIVE TECH-*
 4 *NOLOGIES RESEARCH, DEVELOPMENT, AND DEM-*
 5 *ONSTRATION PROGRAMS.*—*For each of fiscal years*
 6 *1995, 1996, 1997, 1998, and 1999, not more than*
 7 *\$20,000,000 of the amounts available in the Fund*
 8 *may be used for the purposes of carrying out the ap-*
 9 *plied research, development, and demonstration pro-*
 10 *gram for alternative or innovative technologies and*
 11 *training program authorized under section 311(b)*
 12 *(relating to research, development, and demonstra-*
 13 *tion) other than basic research. Such amounts shall*
 14 *remain available until expended.*

15 “(2) *HAZARDOUS SUBSTANCE RESEARCH, DEM-*
 16 *ONSTRATION, AND TRAINING.*—*From the amounts*
 17 *available in the Fund, not more than the following*
 18 *amounts may be used for the purposes of section*
 19 *311(a) (relating to hazardous substance research,*
 20 *demonstration, and training activities):*

21 “(A) *For fiscal year 1995, \$40,000,000.*

22 “(B) *For fiscal year 1996, \$50,000,000.*

23 “(C) *For fiscal year 1997, \$55,000,000.*

24 “(D) *For fiscal year 1998, \$55,000,000.*

25 “(E) *For fiscal year 1999, \$55,000,000.*

1 *No more than 10 percent of such amounts shall be*
 2 *used for training under section 311(a) for any fiscal*
 3 *year.*

4 “(3) *UNIVERSITY HAZARDOUS SUBSTANCE RE-*
 5 *SEARCH CENTERS.—For each of fiscal years 1995,*
 6 *1996, 1997, 1998, and 1999, not more than*
 7 *\$5,000,000 of the amounts available in the Fund may*
 8 *be used for the purposes of section 311(d) (relating to*
 9 *university hazardous substance research centers).’.*

10 **SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM**
 11 **GENERAL REVENUES.**

12 *Paragraph (1) of section 111(p) (42 U.S.C.*
 13 *9611(p)(1)) is amended to read as follows:*

14 “(1) *IN GENERAL.—The following sums are au-*
 15 *thorized to be appropriated, out of any money in the*
 16 *Treasury not otherwise appropriated, to the Hazard-*
 17 *ous Substance Superfund:*

18 “(A) *For fiscal year 1995, \$250,000,000.*

19 “(B) *For fiscal year 1996, \$250,000,000.*

20 “(C) *For fiscal year 1997, \$250,000,000.*

21 “(D) *For fiscal year 1998, \$250,000,000.*

22 “(E) *For fiscal year 1999, \$250,000,000.*

23 *In addition there is authorized to be appropriated to*
 24 *the Hazardous Substance Superfund for each fiscal*
 25 *year an amount equal to so much of the aggregate*

1 *amount authorized to be appropriated under this sub-*
 2 *section and the appropriate section of the Internal*
 3 *Revenue Code of 1986 as has not been appropriated*
 4 *before the beginning of the fiscal year involved.”.*

5 **SEC. 706. ADDITIONAL LIMITATIONS.**

6 *Section 111 (42 U.S.C. 9611) is amended by adding*
 7 *at the end the following new subsections:*

8 *“(q) ALTERNATIVE OR INNOVATIVE TREATMENT TECH-*
 9 *NOLOGIES.—For each of fiscal years 1995, 1996, 1997,*
 10 *1998, and 1999, not more than \$40,000,000 of the amounts*
 11 *available in the Fund may be used for the purposes of sub-*
 12 *section (a)(7) (relating to alternative or innovative treat-*
 13 *ment technologies).*

14 *“(r) CITIZEN INFORMATION AND ACCESS OFFICES.—*
 15 *For each of fiscal years 1995 through 1999, not more than*
 16 *\$25,000,000 of the amounts available in the Fund may be*
 17 *used to carry out section 117(h) (relating to Citizen Infor-*
 18 *mation and Access Offices).*

19 *“(s) COMMUNITY WORKING GROUPS.—For the period*
 20 *commencing October 1, 1994, and ending September 30,*
 21 *1999, not more than \$30,000,000 of the amounts available*
 22 *in the Fund may be used to make grants under section*
 23 *117(g)(6) (relating to Community Working Groups).*

24 *“(t) WORKER HEALTH AND SAFETY TRAINING AND*
 25 *EDUCATION GRANTS.—For each of fiscal years 1995*

1 *through 1999, not more than \$20,000,000 of the amounts*
 2 *available in the Fund may be used to carry out section*
 3 *126(g) of the Superfund Amendments and Reauthorization*
 4 *Act of 1986 (relating to worker health and safety training*
 5 *and education grants).*

6 “(u) *RECOVERIES*.—Effective beginning October 1,
 7 1995, any recoveries collected pursuant to this Act shall be
 8 credited as offsetting collections to the Superfund appro-
 9 priations account.”.

10 **SEC. 707. USES OF THE FUND.**

11 *Section 111(a) (42 U.S.C. 9611(a)) (as amended by*
 12 *section 702) is further amended by inserting after para-*
 13 *graph (8) the following new paragraphs:*

14 “(9) *REIMBURSEMENT OF POTENTIALLY RESPON-*
 15 *SIBLE PARTY COSTS*.—If a potentially responsible
 16 party and the Administrator enter into a settlement
 17 under this Act under which the Administrator is re-
 18 imbursed for the response costs of the Administrator,
 19 and if the Administrator determines, through a Fed-
 20 eral audit of response costs, that the costs for which
 21 the Administrator was reimbursed—

22 “(A) *are unallowable due to contractor*
 23 *fraud;*

24 “(B) *are unallowable under the Federal Ac-*
 25 *quisition Regulation; or*

1 “(C) should be adjusted due to routine con-
 2 tract and Environmental Protection Agency re-
 3 sponse cost audit procedures;
 4 the Administrator is authorized to use the Fund to re-
 5 imburse a potentially responsible party for any costs
 6 identified under subparagraph (A), (B), or (C).

7 “(10) STATE REGISTRY GRANTS.—The cost of
 8 grants under section 104(d)(5) (relating to State Reg-
 9 istries).”.

10 **SEC. 708. TECHNICAL AND CONFORMING AMENDMENTS.**

11 Section 9507(c)(1)(A) of the Internal Revenue Code of
 12 1986 is amended—

13 (1) at the end of clause (ii), by striking “and”;

14 (2) at the end of clause (iii), by striking “or”
 15 and inserting “and”; and

16 (3) by inserting after clause (iii) the following:

17 “(iv) paragraphs (7), (8), (9), and
 18 (10), of subsection (a), and subsections (q),
 19 (r), (s), and (t), of section 111 of such Act,
 20 or”.

21 **TITLE VIII—ENVIRONMENTAL**
 22 **INSURANCE RESOLUTION FUND**

23 **SEC. 801. SHORT TITLE.**

24 This title may be cited as the “Environmental Insur-
 25 ance Resolution and Equity Act of 1994”.

1 **SEC. 802. DEFINITIONS.**

2 *For purposes of this title:*

3 (1) *APPLICABLE COSTS.*—The term “applicable
4 costs” means applicable National Priorities List facil-
5 ity costs or applicable non-National Priorities List
6 facility costs. Costs of removal shall be treated as ap-
7 plicable costs only if the removal is conducted in ac-
8 cordance with section 104, 106, or 122 of the Com-
9 prehensive Environmental Response, Compensation,
10 and Liability Act of 1980 or under the regulations of
11 the Administrator of the Environmental Protection
12 Agency governing removal actions (section 300.415 of
13 title 40, Code of Federal Regulations, or any successor
14 regulations).

15 (2) *APPLICABLE NATIONAL PRIORITIES LIST FA-*
16 *CILITY COSTS.*—The term “applicable National Prior-
17 ities List facility costs” means the costs for an eligible
18 National Priorities List facility—

19 (A) *of response (as defined in section*
20 *101(25) of the Comprehensive Environmental*
21 *Response, Compensation, and Liability Act of*
22 *1980 (42 U.S.C. 9601(25))), or any other liabil-*
23 *ity imposed under section 107 of such Act (42*
24 *U.S.C. 9607), including the costs of meeting*
25 *State requirements at the facility;*

1 (B) for natural resources damages under
2 section 107 of the Comprehensive Environmental
3 Response, Compensation, and Liability Act of
4 1980 (42 U.S.C. 9607); or

5 (C) to defend potential liability for the costs
6 described in subparagraph (A) or (B) or both,
7 including attorney's fees, costs of suit, consultant
8 and expert fees and costs, and expenses for test-
9 ing and monitoring.

10 (3) APPLICABLE NON-NATIONAL PRIORITIES LIST
11 FACILITY COSTS.—The term “applicable non-National
12 Priorities List facility costs” means the costs for a
13 non-National Priorities List facility—

14 (A) of removal (as defined in section
15 101(23) of the Comprehensive Environmental
16 Response, Compensation, and Liability Act of
17 1980 (42 U.S.C. 9601(23))), or other liability as-
18 sociated with the removal that is imposed under
19 section 107 of such Act (42 U.S.C. 9607), but not
20 including natural resource damages; and

21 (B) to defend potential liability for such
22 costs of removal, including attorney's fees, costs
23 of suit, consultant and expert fees and costs, and
24 expenses for testing and monitoring.

1 (4) *BOARD.*—The term “Board” means the
2 Board of Trustees of the Fund.

3 (5) *ELIGIBLE COSTS.*—The term “eligible costs”
4 means the applicable costs incurred with respect to a
5 hazardous substance disposed of at an eligible facility
6 for which an eligible person either—

7 (A) has not been reimbursed; or

8 (B) has been reimbursed and that are the
9 subject of a dispute between the eligible person
10 and an insurer.

11 The term “eligible costs” shall not include any costs
12 paid by the United States, other than unallocated
13 costs that the United States has established as allow-
14 able costs in its contracts with an eligible person.

15 (6) *ELIGIBLE FACILITY.*—The term “eligible fa-
16 cility” means an eligible National Priorities List fa-
17 cility or an eligible non-National Priorities List facil-
18 ity.

19 (7) *ELIGIBLE NATIONAL PRIORITIES LIST FACIL-*
20 *ITY.*—The term “eligible National Priorities List fa-
21 cility” means any facility placed on the National
22 Priorities List at any time, at which a hazardous
23 substance was disposed of on or before December 31,
24 1985.

1 (8) *ELIGIBLE NON-NATIONAL PRIORITIES LIST*
2 *FACILITY.*—The term “eligible non-National Priorities
3 *List facility*” means any facility where a removal (as
4 *defined in section 101(23) of the Comprehensive Envi-*
5 *ronmental Response, Compensation, and Liability*
6 *Act of 1980 (42 U.S.C. 9601(23))) was conducted*
7 *pursuant to governmental direction or oversight*
8 *under the Comprehensive Environmental Response,*
9 *Compensation, and Liability Act of 1980 and the na-*
10 *tional contingency plan at any time, at which a haz-*
11 *ardous substance was disposed of on or before Decem-*
12 *ber 31, 1985.*

13 (9) *ELIGIBLE PERSON.*—The term “eligible per-
14 *son*” means any person that demonstrates, to the sat-
15 *isfaction of the Fund, that such person—*

16 (A)(i) *has received a notice at any time*
17 *that it may be a potentially responsible party*
18 *pursuant to the Comprehensive Environmental*
19 *Response, Compensation, and Liability Act of*
20 *1980 with respect to an eligible National Prior-*
21 *ities List facility, which notice requests or de-*
22 *mands that such party perform response actions*
23 *or pay response costs or natural resource dam-*
24 *ages for such facility; or*

1 (ii) *is or was liable, or alleged to be liable,*
2 *at any time for a removal (as defined in section*
3 *101(23) of the Comprehensive Environmental*
4 *Response, Compensation, and Liability Act of*
5 *1980 (42 U.S.C. 9601(23))) at any eligible facil-*
6 *ity; and*

7 (B) *had entered into a valid insurance con-*
8 *tract for qualified insurance.*

9 (10) *FACILITY.*—The term “facility” has the
10 *same meaning as provided in section 101(9) of the*
11 *Comprehensive Environmental Response, Compensa-*
12 *tion, and Liability Act of 1980 (42 U.S.C. 9601(9)).*

13 (11) *FUND.*—The term “Fund” means the *Envi-*
14 *ronmental Insurance Resolution Fund.*

15 (12) *NATIONAL CONTINGENCY PLAN.*—The term
16 “national contingency plan” has the same meaning
17 *as provided in section 101(31) of the Comprehensive*
18 *Environmental Response, Compensation, and Liabil-*
19 *ity Act of 1980 (42 U.S.C. 9601(31)).*

20 (13) *NATIONAL PRIORITIES LIST.*—The term
21 “National Priorities List” means the *National Prior-*
22 *ities List under section 105 of the Comprehensive En-*
23 *vironmental Response, Compensation, and Liability*
24 *Act of 1980 (42 U.S.C. 9605).*

1 (14) *PERSON*.—The term “person” means an in-
2 dividual, firm, corporation, association, partnership,
3 consortium, joint venture, commercial entity or gov-
4 ernmental unit (including any predecessor in interest
5 or any subsidiary thereof).

6 (15) *QUALIFIED INSURANCE*.—The term “quali-
7 fied insurance” means insurance for comprehensive
8 general liability or commercial multiperil insurance
9 coverage for any period prior to January 1, 1986.
10 For purposes of this paragraph—

11 (A) comprehensive general liability insur-
12 ance includes broad form liability, general liabil-
13 ity, commercial general liability, and excess or
14 umbrella coverage; and

15 (B) commercial multiperil insurance in-
16 cludes broad form property, commercial package,
17 special multiperil, and excess or umbrella cov-
18 erage.

19 The term “qualified insurance” shall not include any
20 other insurance, such as environmental impairment
21 liability insurance.

22 (16) *VALID INSURANCE CONTRACT*.—The term
23 “valid insurance contract” means a contract for
24 qualified insurance other than any of the following:

1 (A) *An insurance contract with respect to*
2 *which a person has entered into a settlement*
3 *with an insurer providing, or where a judgment*
4 *has provided, that the contract has been satisfied*
5 *and that such person has no right to make any*
6 *further claims for eligible costs under such con-*
7 *tract.*

8 (B) *An insurance contract that covers only*
9 *a time period prior to the earliest date of the ac-*
10 *tion or status of the insured person that resulted*
11 *in liability or potential liability under section*
12 *107 of the Comprehensive Environmental Re-*
13 *sponse, Compensation, and Liability Act of 1980*
14 *(42 U.S.C. 9607).*

15 (C) *An insurance contract with an insur-*
16 *ance company that is insolvent or in insolvency*
17 *proceedings on the date an eligible person elects*
18 *to participate in the Fund.*

19 (D) *An insurance contract that is the sub-*
20 *ject of a settlement between the insurance com-*
21 *pany and the insured pursuant to which the pol-*
22 *icy has been reformed to include an absolute ex-*
23 *clusion for pollution liability.*

24 (E) *An insurance contract issued to a re-*
25 *sponse action contractor for any liability under*

1 *the Comprehensive Environmental Response,*
 2 *Compensation, and Liability Act of 1980 gov-*
 3 *erned by section 119 of such Act (42 U.S.C.*
 4 *9619).*

5 (17) *STATE.*—*The term “State” has the same*
 6 *meaning as provided in section 101(27) of the Com-*
 7 *prehensive Environmental Response, Compensation,*
 8 *and Liability Act of 1980 (42 U.S.C. 9601(27)).*

9 **SEC. 803. ENVIRONMENTAL INSURANCE RESOLUTION**
 10 **FUND.**

11 (a) *ENVIRONMENTAL INSURANCE RESOLUTION FUND*
 12 *ESTABLISHED.*—*There is established the Environmental*
 13 *Insurance Resolution Fund.*

14 (b) *OFFICES.*—*The principal office of the Fund shall*
 15 *be in the District of Columbia or at such other place as*
 16 *the Fund may from time to time prescribe.*

17 (c) *STATUS OF RESOLUTION FUND.*—*Except as ex-*
 18 *pressly provided in this title, the Fund shall not be consid-*
 19 *ered an agency or establishment of the United States.*

20 (d) *BOARD OF TRUSTEES.*—

21 (1) *IN GENERAL.*—*The Fund shall be adminis-*
 22 *tered by a Board of Trustees.*

23 (2) *MEMBERSHIP.*—*The Board shall consist of*
 24 *the following:*

25 (A) *GOVERNMENTAL MEMBERS.*—

1 (i) *The Administrator of the Environ-*
2 *mental Protection Agency or the Adminis-*
3 *trator's designee, who shall be a Deputy As-*
4 *stant Administrator in the Environmental*
5 *Protection Agency or a person with imme-*
6 *diate or general supervisory authority over*
7 *such a Deputy Assistant Administrator.*

8 (ii) *The Attorney General of the*
9 *United States or the Attorney General's des-*
10 *ignee, who shall be a Deputy Assistant At-*
11 *torney General in the Department of Justice*
12 *or a person with immediate or general su-*
13 *pervisory authority over such a Deputy As-*
14 *stant Attorney General.*

15 (B) *PUBLIC MEMBERS.—Five public mem-*
16 *bers appointed by the President not later than*
17 *60 days after the date of enactment of this Act,*
18 *not fewer than 2 of whom shall represent insur-*
19 *ers subject to the appropriate section of the Inter-*
20 *nal Revenue Code of 1986, and not fewer than*
21 *2 of whom shall represent eligible persons. The*
22 *public members shall be citizens of the United*
23 *States. The public members of the Board shall*
24 *not, by reason of such membership, be deemed to*
25 *be officers or employees of the United States.*

1 (C) *NONVOTING MEMBER.*—The Secretary of
2 the Treasury or the designee of the Secretary
3 shall serve as a nonvoting member of the Board.
4 Any designee of the Secretary shall be a Deputy
5 Assistant Secretary in the Department of the
6 Treasury or a person with immediate or general
7 supervisory authority over such a Deputy Assist-
8 ant Secretary.

9 (D) *INTERIM AUTHORITY.*—Notwithstand-
10 ing subparagraph (C) and paragraph (7), until
11 such time as all the public members have been
12 appointed pursuant to subparagraph (B), all au-
13 thority of the Board shall be exercised by major-
14 ity vote of the Attorney General, the Secretary of
15 the Treasury, and the Administrator of the En-
16 vironmental Protection Agency, or their des-
17 ignees.

18 (3) *CHAIRPERSON.*—

19 (A) *DESIGNATION BY PRESIDENT.*—The
20 Chairperson of the Board shall be designated by
21 the President from time to time from among the
22 members described in paragraph (2)(A).

23 (B) *AUTHORITY OF CHAIRPERSON.*—No ex-
24 penditure may be made by the Fund, or other
25 action taken by the Fund, without the concur-

1 *rence of the Chairperson of the Board. Except*
2 *with respect to an action taken or required to be*
3 *taken by the Board, the Chairperson may dele-*
4 *gate such authority to any officer or employee of*
5 *an agency represented by a governmental mem-*
6 *ber of the Board. Any such delegation by the*
7 *Chairperson shall be effective only upon publica-*
8 *tion of notice in the Federal Register.*

9 *(4) COMPENSATION.—Governmental members of*
10 *the Board shall serve without additional compensa-*
11 *tion. Public members of the Board shall, while attend-*
12 *ing meetings of the Board or while engaged in duties*
13 *related to such meetings or other activities of the*
14 *Board pursuant to this title, be entitled to receive*
15 *compensation at the rate of \$200 per day, including*
16 *travel time. While away from their homes or regular*
17 *places of business, members of the Board shall be al-*
18 *lowed travel and actual, reasonable, and necessary ex-*
19 *penses to the same extent as officers of the United*
20 *States.*

21 *(5) TERM OF PUBLIC MEMBERS.—Public mem-*
22 *bers of the Board shall serve for a term of 5 years,*
23 *except that such members may be removed by the*
24 *President for any reason at any time. A public mem-*
25 *ber whose term has expired may continue to serve on*

1 *the Board until such time as the President appoints*
2 *a successor. The President may reappoint a public*
3 *member of the Board, but no such member may con-*
4 *secutively serve more than 2 terms.*

5 (6) *VACANCIES.*—*A vacancy on the Board shall*
6 *be filled in the same manner as the original appoint-*
7 *ment, except that such appointment shall be for the*
8 *balance of the unexpired term of the vacant position.*

9 (7) *QUORUM.*—*Four members of the Board shall*
10 *constitute a quorum for the conduct of business.*

11 (8) *MEETINGS.*—*The Board shall meet not less*
12 *than quarterly at the call of the Chairperson. Meet-*
13 *ings of the Board shall be open to the public unless*
14 *the Board, by a majority vote of members present in*
15 *open session, determines that it is necessary or appro-*
16 *priate to close a meeting. The Chairperson shall pro-*
17 *vide at least 10 days notice of a meeting by publish-*
18 *ing a notice in the Federal Register and such notice*
19 *shall indicate whether it is expected that the Board*
20 *will consider closing all or a portion of the meeting.*
21 *Nothing in this paragraph shall be construed to apply*
22 *to informal discussions or meetings among Board*
23 *members.*

24 (e) *OFFICERS AND EMPLOYEES.*—

1 (1) *CHIEF EXECUTIVE OFFICER; CHIEF FINAN-*
2 *CIAL OFFICER.*—

3 (A) *CHIEF EXECUTIVE OFFICER.*—*The*
4 *Fund shall have a Chief Executive Officer ap-*
5 *pointed by the Chairperson of the Board who*
6 *shall exercise any authority of the Fund or the*
7 *Chairperson under such terms and conditions as*
8 *the Chairperson of the Board may prescribe.*

9 (B) *CHIEF FINANCIAL OFFICER.*—*The Fund*
10 *shall have a Chief Financial Officer appointed*
11 *by the Board.*

12 (2) *COMPENSATION.*—*No officer or employee of*
13 *the Fund may be compensated by the Fund at an an-*
14 *nual rate of pay that exceeds the rate of basic pay in*
15 *effect from time to time for level I of the Executive*
16 *Schedule under section 5312 of title 5, United States*
17 *Code. No officer or employee of the Fund, other than*
18 *a member of the Board, may receive any salary or*
19 *other compensation from any source other than the*
20 *Fund for services rendered during the period of em-*
21 *ployment by the Fund.*

22 (3) *POLITICAL TEST OR QUALIFICATION.*—*No po-*
23 *litical test or qualification shall be used in selecting,*
24 *appointing, promoting, or taking other personnel ac-*

1 *tions with respect to officers, agents, and employees of*
2 *the Fund.*

3 (4) *ASSISTANCE BY FEDERAL AGENCIES.*—*The*
4 *Attorney General, the Secretary of the Treasury, and*
5 *the Administrator of the Environmental Protection*
6 *Agency may, to the extent practicable and feasible*
7 *and in their sole discretion, make personnel and other*
8 *resources available to the Fund. Such personnel and*
9 *resources may be provided on a reimbursable basis,*
10 *and any personnel so provided shall not be considered*
11 *employees of the Fund for purposes of paragraph (2).*

12 (f) *POWERS OF RESOLUTION FUND.*—*Notwithstanding*
13 *any other provision of law, except as provided in section*
14 *803(d)(3)(B) or in any other provision of this title or as*
15 *may be hereafter enacted by Congress expressly in limita-*
16 *tion of the provisions of this subsection, the Fund shall have*
17 *the power—*

18 (1) *to have succession until dissolved by Act of*
19 *Congress;*

20 (2) *to make and enforce such bylaws, rules, and*
21 *regulations as may be necessary or appropriate to*
22 *carry out the purposes of this title;*

23 (3) *to make and perform contracts, agreements,*
24 *and commitments;*

1 (4) *to settle, adjust, and compromise, and with*
2 *or without consideration or benefit to the Fund re-*
3 *lease or waive in whole or in part, in advance or oth-*
4 *erwise, any claim, demand, or right of, by, or against*
5 *the Fund;*

6 (5) *to sue and be sued, complain, and defend in*
7 *any Federal, State, or other court;*

8 (6) *to determine its necessary expenditures and*
9 *appoint, employ, and fix and provide for the duties,*
10 *compensation and benefits of officers, employees, at-*
11 *torneys, and agents, all of whom shall serve at the*
12 *pleasure of the Chairperson of the Board;*

13 (7) *to hire or accept the voluntary services of*
14 *consultants, experts, advisory boards, and panels to*
15 *aid the Fund in carrying out the purposes of this*
16 *title; and*

17 (8) *to take such other actions as may be nec-*
18 *essary to carry out the responsibilities of the Fund*
19 *under this title.*

20 (g) *BORROWING AUTHORITY.—Nothing in this title*
21 *shall be construed to permit the Fund to issue any evidence*
22 *of indebtedness or otherwise borrow money.*

23 (h) *CONFLICTS OF INTEREST.—*

24 (1) *STANDARDS OF CONDUCT.—For purposes of*
25 *the standards of conduct promulgated by the Office of*

1 *Government Ethics pursuant to part 2635 of title 5,*
 2 *Code of Federal Regulations, officers and employees of*
 3 *the Fund shall be considered to be officers and em-*
 4 *ployees of agencies, within the meaning of such part.*
 5 *The Chairperson of the Board shall enforce such*
 6 *standards and may prescribe such supplemental*
 7 *standards of conduct as the Board determines to be*
 8 *appropriate.*

9 (2) *FINANCIAL CONFLICTS OF INTEREST.—For*
 10 *purposes of section 208 of title 18, United States*
 11 *Code, officers and employees of the Fund shall be con-*
 12 *sidered to be officers and employees of the executive*
 13 *branch of the United States Government.*

14 (i) *TORT CLAIMS.—The Fund shall be considered to*
 15 *be an agency of the United States for purposes of chapter*
 16 *171 of title 28, United States Code.*

17 **SEC. 804. RESOLUTION OFFERS.**

18 (a) *IN GENERAL.—The Fund shall offer 1 comprehen-*
 19 *sive resolution to each eligible person. The offer shall be for*
 20 *a percentage of all the eligible costs of such eligible person*
 21 *incurred in connection with all eligible facilities. The*
 22 *amount of the offer shall be determined pursuant to section*
 23 *806.*

24 (b) *REQUESTS FOR RESOLUTION OFFERS.—*

1 (1) *IN GENERAL.*—An eligible person may, at
 2 any time after the promulgation of the interim final
 3 regulations under section 812(a), file a request for a
 4 resolution offer from the Fund.

5 (2) *RESPONSE TO REQUEST.*—Not later than 180
 6 days after the receipt of a complete request as deter-
 7 mined by the Fund, the Fund shall in writing—

8 (A) make a resolution offer to each eligible
 9 person that has filed a request for a resolution
 10 offer; or

11 (B) notify a person filing such a request
 12 that such person is not an eligible person.

13 (c) *JOINT VENTURES AND SUBSIDIARIES.*—A joint
 14 venture shall not be aggregated with any individual joint
 15 venturer for purposes of this section but shall be treated as
 16 a distinct entity for such purposes. All claims by subsidi-
 17 aries shall be included in a single claim by the corporate
 18 parent for purposes of this Act.

19 **SEC. 805. DOCUMENTATION OF CLAIMS AND INSURANCE**
 20 **COVERAGE.**

21 (a) *SCREENING OF CLAIMS.*—

22 (1) *DENIAL BY REASON OF FELONY.*—The Fund
 23 may deny a resolution offer to an otherwise eligible
 24 person for a specific facility if the eligible person has
 25 been convicted of a felony under any Federal or State

1 *statute that has a material effect on the response costs*
2 *or natural resource damage incurred at the facility.*

3 (2) *FILING AND ACTIVE PURSUIT OF CLAIMS.—*

4 *The Fund may decide not to make an offer to an eli-*
5 *gible person unless the eligible person has filed a*
6 *claim and is actively pursuing the claim. The Fund*
7 *may also decide that an offer should be made to any*
8 *such person.*

9 (3) *EFFECT OF SCREENING.—An eligible person*
10 *who has been denied a resolution offer under this sub-*
11 *section for 1 or more facilities shall not be subject to*
12 *sections 807(c) and 809(a) with respect to the facili-*
13 *ties.*

14 (b) *FILING OF CLAIMS.—For the purposes of subsection*
15 *(a), an eligible person shall be considered to have filed a*
16 *claim if the eligible person has notified 1 or more of its*
17 *insurers of the existence of a claim, or has engaged in active*
18 *investigation and preparation of a claim, or has filed a*
19 *lawsuit seeking coverage for eligible costs. Failure to have*
20 *filed a claim or to have engaged in settlement discussions*
21 *before January 1, 1994, shall not be considered to preclude*
22 *an eligible person from receiving an offer from the Fund*
23 *if the eligible person had not received any notice letter from*
24 *a governmental authority or 1 or more potentially respon-*
25 *sible parties asserting its potential liability under the Com-*

1 *prehensive Environmental Response, Compensation, and*
2 *Liability Act of 1980 at any eligible facility until after*
3 *January 1, 1993.*

4 (c) *ACTIVE PURSUIT OF CLAIMS.*—*For purposes of this*
5 *section, an eligible person shall be considered to be actively*
6 *pursuing a claim if—*

7 (1) *the person has filed a lawsuit against an in-*
8 *surer, has filed a motion or another pleading in a*
9 *lawsuit against an insurer, or has engaged in any*
10 *discovery in a lawsuit against an insurer during the*
11 *period beginning January 1, 1993, and ending De-*
12 *cember 31, 1993, regarding eligible costs at an eligible*
13 *facility;*

14 (2) *the person has engaged in settlement discus-*
15 *sions with an insurer during the period beginning*
16 *January 1, 1993, and ending December 31, 1993, re-*
17 *garding eligible costs at an eligible facility;*

18 (3) *the person has engaged in active investiga-*
19 *tion and preparation of a claim during the period be-*
20 *ginning January 1, 1993, and ending December 31,*
21 *1993;*

22 (4) *if the person has received a letter from an in-*
23 *surer rejecting coverage or reserving its rights to reject*
24 *coverage regarding eligible costs at an eligible facility,*
25 *the person has sent within 1 year thereafter an addi-*

1 *tional status report or letter apprising an insurer of*
2 *activities regarding an eligible facility; or*

3 *(5) the eligible person has sent a letter to an in-*
4 *surer notifying an insurer of the potential existence*
5 *of a claim regarding eligible costs at an eligible facil-*
6 *ity and has received no response from the insurer.*

7 *(d) DOCUMENTATION OF COVERAGE.—*

8 *(1) EFFECT OF DOCUMENTATION.—Coverage of*
9 *an eligible person for policy years prior to 1986 and*
10 *the applicable deductibles and limits on coverage shall*
11 *be confirmed to the satisfaction of the Fund by the*
12 *terms of the policies or other documentary proof of in-*
13 *surance provided by, or for, the eligible person in ac-*
14 *cordance with this subsection.*

15 *(2) SUBMISSION OF DOCUMENTARY EVIDENCE.—*
16 *After promulgation of regulations governing docu-*
17 *mentation requirements, an eligible person requesting*
18 *an offer shall submit copies of its insurance policies,*
19 *or other documentary evidence sufficient to establish*
20 *the following 6 terms of coverage: insurance company,*
21 *policy number, type of policy, duration of policy, de-*
22 *ductible or self-insured retention, and limit of cov-*
23 *erage. Documentary evidence may consist of any doc-*
24 *uments from an insurance company or broker or doc-*
25 *uments of the eligible person or other party that are*

1 *generally contemporaneous with the term of the policy*
2 *or with subsequent retrospective rating under the pol-*
3 *icy. Where documentary evidence (other than a pol-*
4 *icy) is relied upon as the proof of coverage, an eligible*
5 *person shall certify that it has undertaken a good*
6 *faith investigation of its records, that its submission*
7 *is complete and accurate to the best of its information*
8 *and belief, and that it does not have a copy of the in-*
9 *surance policy. If an eligible person submits docu-*
10 *mentary evidence that does not establish all 6 terms*
11 *of coverage but that does establish the name of the in-*
12 *surance company and 1 or more other terms evidenc-*
13 *ing coverage, the named insurance company shall un-*
14 *dertake a good faith investigation for any policy or*
15 *other relevant documents evidencing the eligible per-*
16 *son's coverage. At the conclusion of the investigation,*
17 *the named insurance company shall—*

18 (A) *provide to the Fund any policies or*
19 *other documents relevant to the eligible person's*
20 *claim of coverage; or*

21 (B) *certify that it has undertaken a good*
22 *faith investigation of its records and that it has*
23 *produced any and all policies or documents*
24 *available to the insurer and relevant to the eligi-*
25 *ble person's claim of coverage.*

1 *Subsequent to the named insurance company's pro-*
2 *duction or certification, the Fund shall decide whether*
3 *a person has provided adequate proof of insurance*
4 *based on the evidence presented. Submission of the 6*
5 *terms of coverage referred to in this paragraph shall*
6 *be treated as adequate proof of insurance.*

7 (3) *DEFINITION.—For the purposes of this sub-*
8 *section, the term “good faith investigation”, used with*
9 *respect to a company, means a search that can be*
10 *reasonably conducted in light of the recordkeeping*
11 *system of the company and the documentary evidence*
12 *available.*

13 (e) *PRIOR SETTLEMENTS.—*

14 (1) *DISCLOSURE.—Each eligible person shall be*
15 *required to disclose and certify the amounts and*
16 *terms of any settlement reached with an insurer for*
17 *eligible costs at eligible facilities. In the event that the*
18 *terms of such a settlement are subject to a protective*
19 *order or are otherwise confidential, the eligible person*
20 *may provide evidence of the confidential nature of the*
21 *settlement information to the Fund. Upon receipt of*
22 *such evidence, the Fund shall be obligated to preserve*
23 *the confidentiality of all such settlement information.*

1 (2) *EFFECT OF TITLE ON PRIOR SETTLE-*
 2 *MENTS.—This title shall have no effect on prior settle-*
 3 *ments between eligible persons and an insurer.*

4 **SEC. 806. AMOUNT OF RESOLUTION OFFERS.**

5 (a) *RESOLUTION OFFERS.—The Fund shall make reso-*
 6 *lution offers to each eligible person equal to the applicable*
 7 *percentage (determined under this section) of the lesser of*
 8 *the following:*

9 (1) *The eligible costs actually incurred by an eli-*
 10 *gible person.*

11 (2) *The available coverage, as determined under*
 12 *this section.*

13 (b) *APPLICABLE PERCENTAGE.—*

14 (1) *IN GENERAL.—For each eligible person that*
 15 *has not established a litigation venue pursuant to*
 16 *subsection (d), the applicable percentage shall be equal*
 17 *to the facility location percentage for that person. For*
 18 *each eligible person that has established 1 or more*
 19 *litigation venues pursuant to subsection (d), the ap-*
 20 *plicable percentage shall be comprised of $\frac{1}{3}$ of the fa-*
 21 *cility location percentage for that person plus $\frac{2}{3}$ of*
 22 *the venue percentage for that person.*

23 (2) *FACILITY LOCATION PERCENTAGE.—*

24 (A) *ONE OR MORE ELIGIBLE NATIONAL PRI-*
 25 *ORITIES LIST FACILITIES.—For each eligible per-*

son, the Fund shall establish a facility location percentage. The percentage shall be equal to the weighted average of the State percentages for each eligible National Priorities List facility for which such person has been identified as a potentially responsible party. In determining such weighted average, each such eligible facility shall be accorded equal value, except as provided in paragraph (4).

(B) *NO ELIGIBLE NATIONAL PRIORITIES LIST FACILITIES.*—For each person not identified as a potentially responsible party at 1 or more eligible National Priorities List facilities but who is, or is alleged to be, liable at any time for removal (as defined in section 101(23) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(23))) at 1 or more eligible non-National Priorities List facilities, the Fund shall establish a facility location percentage equal to the weighted average of the State percentages for each such eligible non-National Priorities List facility. In determining such weighted average, each such facility shall be accorded equal value.

(3) *LITIGATION VENUE PERCENTAGE.*—

1 (A) *ONE OR MORE ELIGIBLE NATIONAL PRI-*
2 *ORITIES LIST FACILITIES.*—For each eligible per-
3 son that has established 1 or more litigation
4 venues pursuant to subsection (d) with respect to
5 1 or more eligible National Priorities List facili-
6 ties, the Fund shall establish a litigation venue
7 percentage. The percentage shall be equal to the
8 weighted average of the State percentages for
9 each eligible National Priorities List facility in
10 each State in which such eligible person has es-
11 tablished a litigation venue. In determining such
12 weighted average, each eligible National Prior-
13 ities List facility with respect to which such per-
14 son has established a litigation venue shall be ac-
15 corded equal value.

16 (B) *NO ELIGIBLE NATIONAL PRIORITIES*
17 *LIST FACILITIES.*—For each eligible person that
18 does not have 1 or more eligible National Prior-
19 ities List facilities and has established litigation
20 venue with respect to 1 or more eligible non-Na-
21 tional Priorities List facilities pursuant to sub-
22 section (d), the Fund shall establish a litigation
23 venue percentage equal to the weighted average of
24 the State percentages for each eligible non-Na-
25 tional Priorities List facility in each State in

1 *which such eligible person has established a liti-*
 2 *gation venue. In determining such weighted av-*
 3 *erage, each eligible non-National Priorities List*
 4 *facility with respect to which litigation venue*
 5 *has been established shall be accorded equal*
 6 *value.*

7 (4) *EXTRA WEIGHTING OF LARGE FACILITIES.—*
 8 *In determining the facility location percentage under*
 9 *paragraph (2)(A), the Fund shall count a facility*
 10 *twice for weighting purposes if—*

11 (A) *the facility is located in the same State*
 12 *as the State in which litigation venue has been*
 13 *established;*

14 (B) *the facility is included in the eligible*
 15 *person's coverage litigation in that venue; and*

16 (C) *total response costs incurred plus esti-*
 17 *mated response costs exceed \$50,000,000, as es-*
 18 *tablished by governmental cost summaries or de-*
 19 *mands, records or decision, or evidence satisfac-*
 20 *tory to the Fund of costs actually incurred.*

21 (c) *STATE PERCENTAGE.—*

22 (1) *CONGRESSIONAL FINDINGS.—Congress finds*
 23 *that—*

24 (A) *as of January 1, 1994, State law gen-*
 25 *erally is more favorable to eligible persons that*

1 *pursue claims concerning eligible costs against*
2 *insurers in some States;*

3 *(B) State law generally is more favorable to*
4 *insurers with respect to such claims in some*
5 *States;*

6 *(C) in some States the law generally favors*
7 *neither insurers nor eligible persons with respect*
8 *to such claims or that there is insufficient infor-*
9 *mation to determine whether such law generally*
10 *favors insurers or eligible persons with respect to*
11 *such claims; and*

12 *(D) considerations of equity and fairness re-*
13 *quire that resolution offers made by the Fund*
14 *shall vary to reflect the relative state of the law*
15 *among the several States.*

16 *(2) STATE PERCENTAGE CATEGORIES.—For pur-*
17 *poses of this section, the States are classified into the*
18 *following percentage categories:*

19 *(A) 20 PERCENT.—The State percentage*
20 *shall be 20 percent for Florida, Maine, Mary-*
21 *land, Massachusetts, Michigan, New York, North*
22 *Carolina, and Ohio.*

23 *(B) 60 PERCENT.—The State percentage*
24 *shall be 60 percent for California, Colorado,*

1 *Georgia, Illinois, New Jersey, Washington, West*
2 *Virginia, and Wisconsin.*

3 (C) 40 PERCENT.—*For all other States the*
4 *State percentage shall be 40 percent.*

5 (d) LITIGATION VENUE.—*For purposes of this section,*
6 *litigation venue is considered established with respect to an*
7 *eligible person if—*

8 (1) *on or before December 31, 1993, the eligible*
9 *person had filed a complaint, or third-party com-*
10 *plaint, in a court of competent jurisdiction against*
11 *an insurer with respect to eligible costs at any part*
12 *of an eligible facility; and*

13 (2) *no motion to change venue with respect to*
14 *such complaint was pending on January 31, 1994.*

15 (e) AVAILABLE COVERAGE.—

16 (1) IN GENERAL.—*The Fund shall determine the*
17 *available coverage for each eligible person by adding*
18 *the unexhausted limits of liability contained in all*
19 *valid insurance contracts of insurance (including per*
20 *occurrence, aggregate, primary, excess, or other lim-*
21 *its) and then by subtracting the total of all*
22 *deductibles and self-insured retentions applicable to*
23 *those policies. In calculating the available coverage*
24 *and the average deductible pursuant to section 808(c),*
25 *the Fund shall exclude any deductible or self-insured*

1 *retention contained in a policy that has already been*
2 *paid by the eligible person.*

3 (2) *PER OCCURRENCE BASIS POLICIES.*—*For in-*
4 *surance policies with limits or deductibles, or self-in-*
5 *sur ed retentions, expressed on a per occurrence basis*
6 *without an aggregate limit, the limit or deductible,*
7 *and the self-insured retention, shall be an amount*
8 *equal to the limit or deductible, and the self-insured*
9 *retention, respectively, in the policy multiplied by the*
10 *number of eligible facilities of the eligible person and*
11 *by the number of years the policy was in effect. Per*
12 *occurrence limits or deductibles may be adjusted by*
13 *the Fund whenever there is an increase in the eligible*
14 *facilities attributable to an eligible party.*

15 (f) *ADJUSTMENT FOR OWNED PROPERTY SITES.*—

16 (1) *ADJUSTMENT.*—*If an eligible person seeks*
17 *payment of eligible costs for an owned property site,*
18 *the percentage paid for such site shall be calculated*
19 *by multiplying by 70 percent the applicable percent-*
20 *age determined under section 806(b)(1) that would*
21 *otherwise be applicable to such eligible costs (includ-*
22 *ing eligible costs for offsite contamination attributable*
23 *to the owned property), except that the percentage*
24 *paid for such site shall not be less than the applicable*

1 *percentage determined under section 806(b)(1) minus*
2 *12 percentage points.*

3 (2) *DEFINITIONS.—For purposes of this sub-*
4 *section:*

5 (A) *OWNED PROPERTY SITE.—A facility*
6 *shall be considered an owned property site if—*

7 (i) *an eligible person owned or leased*
8 *the facility at the time of initial disposal or*
9 *a predecessor company owned or leased the*
10 *facility at the time of initial disposal and*
11 *the predecessor company merged into an eli-*
12 *gible person or became the wholly owned*
13 *subsidiary of an eligible person;*

14 (ii) *the property owned or leased by*
15 *the eligible person or predecessor company*
16 *represents all or a substantial portion of the*
17 *facility as specifically designated on the Na-*
18 *tional Priorities List or as subject to a re-*
19 *moval covered by this title;*

20 (iii) *(I) an eligible person or prede-*
21 *cessor company generated substantially all*
22 *of the hazardous substances that were dis-*
23 *posed of during the period such person or*
24 *predecessor owned or leased the facility; or*

1 (ii) *an eligible person or predecessor*
2 *company owned a landfill or other unit that*
3 *is part of the property on which a manufac-*
4 *turing or industrial facility is situated, the*
5 *landfill or other unit was used for the treat-*
6 *ment, storage, or disposal of waste generated*
7 *from the manufacturing or industrial facil-*
8 *ity and from third parties, and the landfill*
9 *or other unit contains waste that is not pri-*
10 *marily municipal solid waste or sewage*
11 *sludge, as defined in paragraphs (41) and*
12 *(49), respectively, of section 101 of the Com-*
13 *prehensive Environmental Response, Com-*
14 *pensation, and Liability Act of 1980 (42*
15 *U.S.C. 9601); and*

16 (iv) *the hazardous substances associ-*
17 *ated with the owned property, either by the*
18 *initial disposal or subsequent disposal, con-*
19 *stitute the basis for liability at the facility.*

20 (B) *PROPERTY NOT CONSIDERED OWNED*
21 *PROPERTY.—A facility shall not be considered*
22 *owned property of an eligible person for purposes*
23 *of this section when the eligible person acquired*
24 *the facility from, or acquired the assets of, a*
25 *company that engaged in initial disposal of haz-*

1 *ardous substances at the facility and the eligible*
2 *person did not engage in initial disposal of haz-*
3 *ardous substances at the facility during its pe-*
4 *riod of ownership. An owned property site shall*
5 *not include a public or commercial landfill pri-*
6 *marily used for disposal, storage, or treatment of*
7 *municipal solid waste or sewage sludge, as de-*
8 *finied in paragraphs (41) and (49), respectively,*
9 *of section 101 of the Comprehensive Environ-*
10 *mental Response, Compensation, and Liability*
11 *Act of 1980 (42 U.S.C. 9601).*

12 (C) *INITIAL DISPOSAL.*—*For purposes of*
13 *this paragraph, the term “initial disposal”*
14 *means the spilling, pumping, pouring, emitting,*
15 *emptying, discharging, injecting, dumping, dis-*
16 *posing, placing, or leaking of hazardous sub-*
17 *stances into the environment caused by the facil-*
18 *ity owner but does not include—*

- 19 (i) *any continuing or further leaking,*
20 *escaping, or leaching of hazardous sub-*
21 *stances into the environment during subse-*
22 *quent periods of ownership that was not*
23 *caused by the acts of a subsequent owner, or*
24 (ii) *any activities undertaken by an*
25 *owner related to response at the facility.*

1 The term “initial disposal” shall not be con-
2 strued to mean only a single event, but means an
3 event that may occur with each subsequent owner
4 of a facility.

5 **SEC. 807. ACCEPTANCE OF RESOLUTION OFFER.**

6 (a) ACCEPTANCE.—

7 (1) ELECTION TO ACCEPT.—An eligible person
8 may, when submitting a request for a resolution to
9 the Fund, make a written irrevocable election to ac-
10 cept any resolution to be made by the Fund.

11 (2) NOTIFICATION.—An eligible person that does
12 not make an election pursuant to paragraph (1) shall,
13 within 60 days after the receipt of a resolution offer
14 from the Fund, notify the Fund in writing of its ir-
15 revocable acceptance or rejection of such offer. An eli-
16 gible person who does not so accept or reject a resolu-
17 tion offer within 60 days shall be deemed to have
18 made an irrevocable election to reject the offer and the
19 provisions of section 809 (relating to rejection of offer)
20 shall apply.

21 (b) ACCEPTANCE OR REJECTION PRIOR TO OFFER.—

22 Upon expiration of the 60-day period immediately follow-
23 ing the date of enactment of this Act, any eligible person
24 may notify the Fund that such eligible person accepts or
25 rejects any offer to be issued by the Fund under this title.

1 *Any such notice shall be signed by a duly authorized officer*
2 *of the eligible person, as certified by the secretary of the*
3 *eligible person or by a person with equivalent authority.*

4 *(c) WAIVER OF INSURANCE CLAIMS.—Any eligible per-*
5 *son accepting a resolution offer from the Fund shall agree*
6 *in writing, subject to reinstatement described in subsection*
7 *(d), to waive, stay, or dismiss any of its existing and future*
8 *claims against any insurer for eligible costs, including bad*
9 *faith claims pertaining to actions to recover eligible costs,*
10 *except that this waiver shall not apply to actions brought*
11 *against insolvent insurers or under environmental impair-*
12 *ment liability insurance.*

13 *(d) REINSTATEMENT OF INSURANCE CLAIMS.—If the*
14 *Fund fails to timely fulfill its obligations to an eligible per-*
15 *son under the terms of an accepted resolution offer, such*
16 *eligible person shall be entitled to reinstate any of its exist-*
17 *ing and future claims under a contract for insurance with*
18 *respect to eligible costs. A shortfall provided for in section*
19 *808(f) shall not be considered a failure of the Fund to time-*
20 *ly fulfill its obligations. Whenever any claim is reinstated*
21 *under this subsection, the person making such claim shall*
22 *not be treated as rejecting a resolution offer under section*
23 *809.*

24 *(e) GOOD FAITH ACCEPTANCE.—The acceptance by an*
25 *eligible person of a resolution offer under subsection (a) or*

1 *(b) of section 807 and the waiver of any existing or future*
2 *claims against an insurer under this section shall constitute*
3 *the good faith pursuit and resolution of such claims, shall*
4 *be considered prudent action to minimize the cost exposure*
5 *of that person, and the amount of the resolution offer shall*
6 *be considered a reasonably available insurance recovery.*

7 **SEC. 808. RESOLUTION PAYMENTS.**

8 *(a) TIME OF PAYMENT; PRE-RESOLUTION COSTS.—*
9 *The Fund shall make equal annual payments over a period*
10 *of 10 years for the applicable percentage of eligible costs*
11 *incurred by an eligible person on or before the date such*
12 *person accepts a resolution offer. The Fund may, in its sole*
13 *discretion, make such payments over a shorter period if the*
14 *aggregate eligible costs do not exceed \$50,000. An eligible*
15 *person shall submit to the Fund documentation of such costs*
16 *as the Fund may require. The initial payment to an eligible*
17 *person under this paragraph shall be made not later than*
18 *60 days after the receipt of documentation satisfactory to*
19 *the Fund. For eligible facilities that are the subject of insur-*
20 *ance coverage litigation or arbitration, interest shall begin*
21 *to accrue on amounts payable pursuant to a resolution offer*
22 *commencing on the date on which the eligible person accepts*
23 *the offer pursuant to subsection (a) or (b) of section 807.*
24 *For all other eligible facilities, interest shall not accrue on*
25 *amounts payable pursuant to a resolution offer during the*

1 5-year period beginning on the date of enactment of this
2 Act. In each year, after the commencement of the payment
3 of interest as specified above, interest shall accrue on the
4 unpaid balance of the pre-resolution costs in an amount
5 equal to the rate of interest on 1-year Treasury bills issued
6 on the anniversary of such date of enactment or, if no bills
7 were issued on such date, on the last date such bills were
8 issued prior to such anniversary.

9 (b) *TIME OF PAYMENT; POST-RESOLUTION COSTS.*—
10 The Fund shall make payments for eligible costs incurred
11 by an eligible person after the date such person accepts a
12 resolution offer to the eligible person, or to a contractor or
13 other person designated by the eligible person, subject to
14 such documentation as the Fund may require. Payments
15 under this title shall be made not later than 60 days after
16 the receipt of documentation (satisfactory to the Fund) with
17 respect to such costs.

18 (c) *ADJUSTMENT FOR DEDUCTIBLE OR SELF-INSUR-*
19 *ANCE.*—In the case of an eligible person that has submitted
20 to the Fund, as proof of status as an eligible person, a valid
21 insurance contract subject to a self-insured retention or a
22 deductible, payment to such eligible person pursuant to a
23 resolution shall be reduced once by an amount equal to the
24 average of the amounts of self-insured retentions and
25 deductibles in all valid insurance contracts of insurance of

1 *the eligible person. For purposes of determining such aver-*
2 *age in the case of a per occurrence deductible or self-insured*
3 *retention, the Fund shall only count such deductible or self-*
4 *insured retention once for each policy year.*

5 (d) *ADJUSTMENT FOR CERTAIN DUTY-TO-DEFEND*
6 *COSTS.—If an insurer has incurred and paid costs pursu-*
7 *ant to a duty-to-defend clause contained in a contract for*
8 *insurance, and such costs are the subject of a dispute be-*
9 *tween the eligible person and an insurer, the Fund shall*
10 *reduce payment of a resolution to an eligible person by an*
11 *amount equal to such costs and pay such amount to the*
12 *insurer. If such costs were paid by the insurer on or before*
13 *the date the eligible person accepted a resolution offer made*
14 *by the Fund, payment to an insurer under this section shall*
15 *be made in equal annual installments over a period of 10*
16 *years, and interest shall not accrue with respect to such*
17 *costs. The Fund may, in its sole discretion, make such pay-*
18 *ments over a shorter period if the aggregate costs do not*
19 *exceed \$50,000.*

20 (e) *EFFECT OF PAYMENTS.—*

21 (1) *IN GENERAL.—Payments made to an eligible*
22 *person by the Fund pursuant to a resolution offer*
23 *shall be treated as payments made by an insurer in*
24 *satisfaction of the terms and conditions of a contract*
25 *of insurance. Such payments shall be allocated pro*

1 *rata to each year in which proof of insurance has*
2 *been established. The amount allocated to each cov-*
3 *erage year shall be allocated 100 percent to the pri-*
4 *mary coverage until it is exhausted and then 100 per-*
5 *cent to each successively higher layer of coverage until*
6 *each such layer is exhausted.*

7 (2) *RECOVERY.—No insurer shall be allowed to*
8 *collect recovery pursuant to a reinsurance contract on*
9 *the basis of a payment by the Fund unless such rein-*
10 *surer is not subject to the fees under the appropriate*
11 *section of the Internal Revenue Code of 1986 or has*
12 *not satisfied its obligations pursuant to such fees.*

13 (3) *PROHIBITION ON RETROSPECTIVE RATING.—*
14 *Payments made to an eligible person by the Fund*
15 *pursuant to a resolution offer shall not be subject to*
16 *retrospective rating under a valid insurance contract.*

17 (f) *SHORTFALL.—If, in any year during the first 10*
18 *years after the date of enactment of this Act, the Chair-*
19 *person of the Board does not have sufficient funds available*
20 *to pay all eligible costs of resolution offers accepted by eligi-*
21 *ble persons, the Fund shall determine the amount of the*
22 *costs that cannot be paid in that year (referred to in this*
23 *title as a “shortfall”). The Fund shall allocate the shortfall*
24 *to the eligible persons in proportion to the size of their pend-*
25 *ing claims for reimbursement from the Fund. This shortfall*

1 *shall be paid to the eligible person and shall be amortized*
 2 *over the next 5 years, and the amortized amount shall be*
 3 *paid with interest at the rate specified for the amortization*
 4 *of past costs. A shortfall that is being amortized under this*
 5 *subsection shall not be considered a default by the Fund,*
 6 *triggering the reinstatement of claims.*

7 (g) *INTERIM ALLOCATIONS.—An eligible person ac-*
 8 *cepting an offer of resolution shall be entitled to receive pay-*
 9 *ment of all eligible costs that have been incurred. If an eligi-*
 10 *ble person obtains reimbursement of such eligible costs as*
 11 *a result of a final allocation, contribution action, or other-*
 12 *wise, the eligible person shall notify the Fund of the amount*
 13 *of the reimbursement and shall either—*

14 (1) *reduce its next claim to the Fund for pay-*
 15 *ment of eligible costs by the amount of the reimburse-*
 16 *ment; or*

17 (2) *refund the amount of the reimbursement.*

18 **SEC. 809. REJECTION OF RESOLUTION OFFER AND REIM-**
 19 **BURSEMENT TO INSURER.**

20 (a) *INSURER ACTION AGAINST ELIGIBLE PERSON.—*

21 (1) *LIABILITY FOR LITIGATION COSTS.—Any eli-*
 22 *gible person that rejects a resolution offer (including*
 23 *a person who makes an early rejection pursuant to*
 24 *section 807(b)), litigates a claim with respect to in-*
 25 *surance coverage of eligible costs against an insurer,*

1 *and obtains a final judgment that is determined by*
2 *the court with jurisdiction over such litigation to be*
3 *less favorable than the resolution offered by the Fund*
4 *(or, in the case of a rejection pursuant to section*
5 *807(b), the amount that the Fund would have of-*
6 *fered), shall be liable to such insurer for 40 percent*
7 *of the reasonable attorney's fees, other litigation costs,*
8 *and direct costs, incurred after the date of the resolu-*
9 *tion offer by the insurance companies that are attrib-*
10 *utable to eligible costs at eligible facilities.*

11 (2) *LIMIT OF LIABILITY.—Liability of an eligible*
12 *person under paragraph (1) shall not exceed 160 per-*
13 *cent of all of the attorney's fees, other litigation costs,*
14 *and direct costs of company in-house personnel, in-*
15 *curring after such date by an eligible person in the*
16 *pursuit of its coverage litigation that are attributable*
17 *to eligible costs at eligible facilities.*

18 (3) *ACTIONS TO RECOVER LITIGATION COSTS.—*
19 *A court having jurisdiction over any action regarding*
20 *a claim of insurance shall have original jurisdiction*
21 *of all actions under this subsection. The court shall*
22 *reduce any award to an insurer in any such action*
23 *by the amount, if any, of the costs and fees described*
24 *in paragraph (1) or (2), as the case may be, and re-*
25 *covered by the insurer pursuant to State law or court*

1 *rule. Nothing in this subsection shall be construed to*
2 *limit or affect in any way the application of State*
3 *law, or the rule of any court, to such costs or fees.*
4 *Upon application by a party to any such action, the*
5 *court may make all determinations necessary to de-*
6 *cide whether an award of fees or costs is required*
7 *hereunder, including the value of the offer made by*
8 *the Fund and whether the attorney's fees or litigation*
9 *costs of any insurer were unreasonable. If the court*
10 *determines that certain fees or costs were unreason-*
11 *able, the court shall exclude such fees or costs from the*
12 *calculation described in paragraph (1) or (2), as the*
13 *case may be.*

14 *(b) REIMBURSEMENT TO INSURER.—If an eligible per-*
15 *son rejects a resolution offer (including a rejection pursuant*
16 *to section 807(b)), litigates a claim with respect to eligible*
17 *costs against 1 or more insurers, and obtains a final judg-*
18 *ment against, or enters into a settlement with, any such*
19 *insurer, the Fund—*

20 *(1) shall reimburse to such insurer or insurers*
21 *the lesser of the amount of the resolution offer made*
22 *to the eligible person (or, in the case of a rejection*
23 *pursuant to section 807(b), the amount that the Fund*
24 *would have offered) or the final judgment or settle-*
25 *ment; and*

(c) *REFUSAL TO MAKE RESOLUTION OFFER.*—Except with respect to a person that rejects a resolution offer pursuant to section 807(b), no eligible person that has not received a resolution offer shall be treated as rejecting an offer for purposes of this section.

21 (a) *IN GENERAL.*—

(A) IN GENERAL.—Except as may be expressly authorized by the Secretary of the Treasury, amounts equal to all fees and assessments

1 *collected pursuant to the appropriate section of*
2 *the Internal Revenue Code of 1986 shall be*
3 *maintained in the Treasury of the United States*
4 *in a Special Fund Account (referred to in this*
5 *subsection as the 'Account'). Amounts deposited*
6 *into such Account shall be considered to be budg-*
7 *et receipts and withdrawals from such Account*
8 *shall be considered to be budget outlays, for pur-*
9 *poses of the Congressional Budget Act of 1974.*

10 (B) *INVESTMENT.*—*The Secretary of the*
11 *Treasury shall invest amounts in the Account*
12 *not needed to fund withdrawals from the Account*
13 *in interest bearing securities of the United*
14 *States. Interest earned from such investments*
15 *shall be credited to the Account. Such securities*
16 *shall be redeemed as necessary to fund withdraw-*
17 *als from the Account.*

18 (C) *USE.*—*No amounts shall be deposited in*
19 *or credited to the Account except as provided in*
20 *this paragraph. All expenditures by or on behalf*
21 *of the Fund shall be paid out of amounts in such*
22 *Account.*

23 (2) *WITHDRAWALS FROM ACCOUNT.*—

24 (A) *CERTIFICATION.*—*Subject to section*
25 *803(d)(3)(B), all amounts withdrawn from the*

1 *Account by or on behalf of the Fund shall be cer-*
2 *tified by a federally authorized certifying officer*
3 *who is an employee of a Federal agency rep-*
4 *resented by a governmental member of the*
5 *Board.*

6 *(B) OTHER TERMS.—The Secretary of the*
7 *Treasury may prescribe such other procedures,*
8 *terms, and conditions governing withdrawals*
9 *from the Account as the Secretary considers to be*
10 *appropriate.*

11 *(b) ANNUAL BUDGETS.—The Fund shall prepare an-*
12 *nual budgets consistent with the requirements of section*
13 *9103 of title 31, United States Code. Not later than March*
14 *31 of each year, the Chairperson of the Board shall transmit*
15 *to the Committee on Environment and Public Works of the*
16 *Senate and the Committee on Energy and Commerce of the*
17 *House of Representatives a budget for the following fiscal*
18 *year.*

19 *(c) AUDITS OF RESOLUTION OFFERS AND PAY-*
20 *MENTS.—*

21 *(1) IN GENERAL.—The regulations required by*
22 *section 812(a) shall provide that each request for a*
23 *resolution payment that exceeds such amount as the*
24 *Board may determine shall be accompanied by an*
25 *independent audit of such request.*

1 (2) *RANDOM AUDITS.*—

2 (A) *IN GENERAL.*—*The Fund shall provide*
3 *for the random audit of requests for resolution*
4 *offers and requests for resolution payments.*

5 (B) *OVERPAYMENTS OR UNDERPAYMENTS.*—
6 *To the extent the Fund determines, on the basis*
7 *of an audit or otherwise, that an overpayment or*
8 *underpayment has been made in connection with*
9 *a resolution offer, the Fund shall decrease or in-*
10 *crease (as the case may be) subsequent payments*
11 *pursuant to such offer.*

12 (C) *REFERRAL OF CERTAIN REQUESTS.*—
13 *The Board shall refer to the Attorney General*
14 *any request for a resolution offer or resolution*
15 *payment that the Board determines, on the basis*
16 *of an audit or otherwise, may be subject to the*
17 *penalties described in section 813(b).*

18 (d) *FINANCIAL STATEMENTS.*—*The financial state-*
19 *ments of the Fund shall be prepared in accordance with*
20 *generally accepted accounting principles and shall be au-*
21 *dited annually by an independent certified public account-*
22 *ant in accordance with the auditing standards issued by*
23 *the Comptroller General. Such auditing standards shall be*
24 *consistent with the private sector's generally accepted audit-*
25 *ing standards.*

1 (e) *INVESTIGATIONS AND OTHER AUDITS.*—The In-
2 spector General of the Environmental Protection Agency is
3 authorized to conduct such audits and investigations of the
4 activity of the Fund as the Inspector General determines
5 to be necessary or appropriate. For purposes of the preced-
6 ing sentence, the provisions of the Inspector General Act of
7 1978 (5 U.S.C. App.) shall apply to the Fund and to the
8 Inspector General to the same extent as they apply to the
9 Environmental Protection Agency.

10 **SEC. 811. STAY OF PENDING LITIGATION.**

11 (a) *ENACTMENT OPERATES AS STAY.*—Except as pro-
12 vided in this section, enactment of this title shall operate
13 as a stay, applicable to all persons other than the United
14 States, of the commencement or continuation, including the
15 issuance or employment of process or service of any plead-
16 ing, motion, or notice, of any judicial, administrative, or
17 other action with respect to claims for indemnity or other
18 claims arising from a valid insurance contract of qualified
19 insurance concerning insurance coverage for eligible costs.

20 (b) *ACTIONS NOT AFFECTED.*—Nothing in this title
21 shall be construed to authorize a stay of any of the follow-
22 ing:

23 (1) Any action involving claims that do not con-
24 cern eligible costs or a valid insurance contract of
25 qualified insurance. Any such claim shall be severed

1 *by operation of law from claims involving eligible*
2 *costs or valid contracts of insurance of qualified in-*
3 *surance, and the insured party may proceed with the*
4 *prosecution of the severed claims not involving eligible*
5 *costs or not involving qualified insurance.*

6 (2) *Any action for which a trial date has been*
7 *scheduled prior to June 1, 1994, for a trial to com-*
8 *mence during the 60-day period immediately follow-*
9 *ing the date of enactment of this Act.*

10 (3) *Any action in which a trial has begun prior*
11 *to such period and has continued without interrup-*
12 *tion into such period.*

13 (c) *TERMINATION OF STAY.—*

14 (1) *EVENTS.—The stay established by subsection*
15 *(a) shall terminate with respect to an eligible person*
16 *upon the earliest of the following:*

17 (A) *The rejection of a resolution offer (in-*
18 *cluding an early rejection) by such eligible per-*
19 *son pursuant to section 807.*

20 (B) *A determination by the Fund that an*
21 *offer will not be made to such eligible person or*
22 *that such person is not an eligible person.*

23 (C) *A determination pursuant to section*
24 *816(b) that the minimum participation level has*
25 *not been achieved.*

1 (D) A failure by the Fund at any time after
2 the date that is 10 years after the date of enact-
3 ment of this Act to timely pay to such eligible
4 person a resolution payment equal to the total
5 amount of eligible costs (including shortfalls
6 from prior years) required to be paid to such
7 person under a resolution offer in any year after
8 such date.

9 (2) *PERSONS.*—The stay established by sub-
10 section (a) shall terminate on the date that is 10
11 years after the date of enactment of this Act with re-
12 spect to—

13 (A) a person that becomes an eligible person
14 on or after such date; and

15 (B) an eligible person that has not filed a
16 request for a resolution offer and has not rejected
17 a resolution offer pursuant to section 807(b) be-
18 fore such date.

19 (d) *AUTHORITY OF UNITED STATES UNAFFECTED.*—
20 Nothing in this section shall be construed to limit or affect
21 in any way the discretion or authority of the United States
22 or any party to commence or continue any allocation proc-
23 ess, cost recovery, or other action pursuant to the authority
24 of sections 101 through 122, and 129, of the Comprehensive

1 *Environmental Response, Compensation, and Liability Act*
2 *of 1980 (42 U.S.C. 9601 et seq.).*

3 (e) *STATUTE OF LIMITATION TOLLED.*—Notwithstand-
4 *ing any other provision of Federal or State law, any Fed-*
5 *eral or State statute of limitation concerning the filing or*
6 *prosecution of an action by an eligible person against an*
7 *insurer, or by an insurer against an eligible person, with*
8 *respect to eligible costs shall be tolled during the pendency*
9 *of the stay of pending litigation established by this title.*

10 **SEC. 812. REGULATIONS.**

11 (a) *PROCEDURES AND DOCUMENTATION.*—Not later
12 *than 120 days after the date of enactment of this Act, the*
13 *Chairperson of the Board shall publish in the Federal Reg-*
14 *ister for public comment of not more than 60 days interim*
15 *final regulations concerning procedures and documentation*
16 *for the submission of requests for resolution offers and the*
17 *payment of accepted resolution offers. Not later than 60*
18 *days after the close of the public comment period, the Chair-*
19 *person of the Board shall publish in the Federal Register*
20 *final regulations concerning such procedures and docu-*
21 *mentation, which may be amended by the Chairperson from*
22 *time to time. The Fund in its discretion may require that*
23 *requests for resolution offers made before the issuance of*
24 *final regulations pursuant to this subsection be revised to*
25 *conform to the requirements of such final regulations.*

1 (b) *OTHER REGULATIONS.*—The Fund may prescribe
2 such other regulations, rules, and procedures as the Fund
3 determines to be appropriate from time to time.

4 (c) *JUDICIAL REVIEW.*—No regulation, rule, or proce-
5 dure prescribed by the Fund shall be subject to review by
6 any court except to the extent such regulation, rule, or pro-
7 cedure is not consistent with a provision of this title. No
8 resolution offer made by the Fund shall be subject to review
9 by any court.

10 ***SEC. 813. COURT JURISDICTION AND PENALTIES.***

11 (a) *JURISDICTION OF FEDERAL COURTS.*—Notwith-
12 standing section 1349 of title 28, United States Code—

13 (1) the Fund shall be deemed to be an agency of
14 the United States for purposes of sections 1345 and
15 1442 of title 28, United States Code;

16 (2) all civil actions to which the Fund is a party
17 shall be deemed to arise under the laws of the United
18 States, and the district courts of the United States
19 shall have original jurisdiction of all such actions,
20 without regard to amount or value;

21 (3) any civil or other action, case or controversy
22 in a court of a State, or in any court other than a
23 district court of the United States, to which the Fund
24 is a party may at any time before the trial thereof
25 be removed by the Fund, without the giving of any

1 *bond or security, to the district court of the United*
2 *States for the district and division embracing the*
3 *place where the same is pending or, if there is no such*
4 *district court, to the district court of the United*
5 *States for the district in which the principal office of*
6 *the Fund is located, by following any procedure for*
7 *removal of causes in effect at the time of such re-*
8 *moval; and*

9 *(4) no attachment or execution shall be issued*
10 *against the Fund or any of its property before final*
11 *judgment in any Federal, State, or other court.*

12 *(b) FALSE OR FRAUDULENT STATEMENTS OR*
13 *CLAIMS.—*

14 *(1) CRIMINAL PENALTIES.—*

15 *(A) FALSE, FICTITIOUS, OR FRAUDULENT*
16 *CLAIMS; BRIBERY.—For purposes of section 287*
17 *of title 18, United States Code, the Fund shall*
18 *be considered an agency of the United States and*
19 *any officer or employee of the Fund shall be con-*
20 *sidered a person in the civil service of the United*
21 *States.*

22 *(B) FRAUD AND FALSE STATEMENTS.—For*
23 *purposes of section 1001 of title 18, United*
24 *States Code, the Fund shall be considered an*
25 *agency of the United States.*

1 (C) *BRIBERY.*—For purposes of section 201
2 of title 18, United States Code, the Fund shall
3 be considered an agency of the United States,
4 and a member of the Board and any officer or
5 employee of the Fund shall be considered to be an
6 officer or employee or person acting for or on be-
7 half of an agency of the United States.

8 (2) *CIVIL PENALTIES.*—Officers and employees of
9 the Fund shall be considered officers and employees of
10 the United States for purposes of section 3729 of title
11 31, United States Code.

12 **SEC. 814. MISCELLANEOUS PROVISIONS.**

13 (a) *ADMISSIBILITY OF RESOLUTION OFFER.*—No reso-
14 lution offered by the Fund shall be admissible in any legal
15 action brought by an eligible person against an insurer or
16 by an insurer against an eligible person.

17 (b) *RESOLUTION PROCESS NOT ADMISSION OF LIABIL-*
18 *ITY.*—No provision of this title, and no action by an eligible
19 person undertaken in connection with any provision of this
20 title, shall in any way constitute an admission of liability
21 in connection with the disposal of a hazardous substance.

22 (c) *PRECEDENTIAL EFFECT.*—No provision of this title
23 shall affect or be construed to establish a precedent with
24 respect to any insurance dispute between any person and
25 insurer not subject to a stay under this title.

1 (d) *SOVEREIGN IMMUNITY OF THE UNITED STATES.*—
2 *No obligation or liability of the Fund shall constitute an*
3 *obligation or liability of the United States, or of any de-*
4 *partment, agency, instrumentality, officer, or employee*
5 *thereof. No person shall have a cause of action of any kind*
6 *against the United States, or any department, agency, in-*
7 *strumentality, officer, or employee thereof with respect to*
8 *any obligation, liability, or activity of the Fund.*

9 **SEC. 815. REPORTS.**

10 (a) *REPORT ON POTENTIAL FOR ESCALATION OF*
11 *EIRF LIABILITY.*—*Not later than the end of the 5th year*
12 *after the date of enactment of this Act, the President shall*
13 *submit a report to Congress assessing the potential liability*
14 *of the Fund over the next 5-year period. The report shall*
15 *include recommendations for amendments to address any*
16 *shortfalls between the projected potential liability of the*
17 *Fund and the amounts authorized to be raised over such*
18 *5-year period.*

19 (b) *REPORT ON NON-NATIONAL PRIORITIES LIST FA-*
20 *CILITIES.*—*The President shall conduct a study of the num-*
21 *ber of non-National Priorities List facilities and the aver-*
22 *age cleanup cost per non-National Priorities List facility*
23 *and shall report his findings not later than 3 years after*
24 *the date of enactment of this Act.*

25 (c) *ANNUAL REPORTS.*—

1 (1) *IN GENERAL.*—*The Fund shall report annu-*
2 *ally to the President and Congress not later than*
3 *January 15 of each year on its activities for the prior*
4 *fiscal year. The report shall include—*

5 (A) *a financial statement audited by an*
6 *independent auditor; and*

7 (B) *a determination of whether the fees and*
8 *assessments imposed by the appropriate section*
9 *of the Internal Revenue Code of 1986 will be suf-*
10 *ficient to meet the anticipated obligations of the*
11 *Fund.*

12 (2) *APPEARANCES BEFORE CONGRESS.*—*Not*
13 *later than 60 days after the submission of each an-*
14 *nual report required by paragraph (1), the members*
15 *of the Board shall appear before the Committee on*
16 *Environment and Public Works of the Senate and the*
17 *Committee on Energy and Commerce of the House of*
18 *Representatives to report on the matters contained in*
19 *the annual report and such other matters concerning*
20 *the Fund as each such committee may require.*

21 (d) *SPECIAL REPORTS.*—*The Fund shall promptly re-*
22 *port to the President and Congress at any time the Fund*
23 *determines that the fees and assessments imposed by the ap-*
24 *propriate section of the Internal Revenue Code of 1986 will*

1 *be insufficient to meet the anticipated obligations of the*
2 *Fund.*

3 ***SEC. 816. EFFECTIVE DATE.***

4 *(a) IN GENERAL.—This title shall take effect on the*
5 *date of enactment of this Act.*

6 *(b) MINIMUM PARTICIPATION LEVEL BY ELIGIBLE*
7 *PERSONS.—*

8 *(1) IDENTIFICATION OF ELIGIBLE PERSONS.—*

9 *(A) SUBMISSION OF LIST.—Each insurance*
10 *company providing coverage to eligible persons*
11 *under a valid insurance contract shall submit to*
12 *the Fund, within 30 days after the date of enact-*
13 *ment of this Act, a list of all eligible persons that*
14 *have filed suit against that company for eligible*
15 *costs, or that have made a claim against that*
16 *company for eligible costs and are actively pur-*
17 *suing such claim.*

18 *(B) NOTIFICATION.—Each insurance com-*
19 *pany submitting such list to the Fund shall im-*
20 *mediately notify each eligible person that is*
21 *identified on the list and provide to each such el-*
22 *igible person a copy of this title together with an*
23 *explanation of this subsection.*

24 *(2) RESPONSE TO THE FUND.—Each eligible*
25 *person notified pursuant to paragraph (1) shall re-*

1 *spond to the Fund by either filing a declaration of in-*
2 *tent or by requesting an applicable percentage.*

3 (3) *DECLARATION OF INTENT.—Unless the eligi-*
4 *ble person files a request for an applicable percentage*
5 *under paragraph (4), the eligible person shall file a*
6 *declaration of intent not earlier than 60 days, and*
7 *not later than 90 days, after the date of enactment of*
8 *this Act. A declaration of intent filed by the eligible*
9 *person shall—*

10 (A) *state whether or not such eligible person*
11 *intends to accept participation in the Fund; and*

12 (B) *identify each eligible National Prior-*
13 *ities List facility for which such person has been*
14 *identified as a potentially responsible party,*
15 *whether or not such eligible person intends to ac-*
16 *cept participation in the Fund.*

17 *A declaration of intent to accept participation in the*
18 *Fund shall constitute acceptance of a Fund offer for*
19 *purposes of this title.*

20 (4) *REQUEST FOR APPLICABLE PERCENTAGE.—*
21 *Each eligible person identified on a list under para-*
22 *graph (1) may file a request for its applicable per-*
23 *centage (as determined under section 806(b)) with the*
24 *Fund within 60 days after the date of enactment of*
25 *this Act. A request filed by an eligible person shall—*

1 (A) *identify each eligible National Prior-*
2 *ities List facility (including the State in which*
3 *such facility is located) at which such eligible*
4 *person has incurred or will incur eligible costs;*
5 *and*

6 (B) *in the case of an eligible person that*
7 *has established at least 1 litigation venue pursu-*
8 *ant to section 806(d), identify the State or States*
9 *in which such venue has been established and*
10 *identify any National Priorities List facility de-*
11 *scribed in section 806(b)(4) (relating to large*
12 *sites) at which such eligible person has incurred*
13 *or will incur eligible costs.*

14 (5) *RENOTIFICATION OF ELIGIBLE PERSONS.—*
15 *Within 90 days after the date of enactment of this*
16 *Act, the Fund shall notify (by certified mail, return*
17 *receipt requested) each eligible person identified on*
18 *the list under paragraph (1) that did not file a dec-*
19 *laration of intent or a request for applicable percent-*
20 *age within the time period prescribed in paragraph*
21 *(3) or (4), as appropriate. Each eligible person noti-*
22 *fied pursuant to this paragraph shall respond to the*
23 *Fund not later than 120 days after the date of enact-*
24 *ment of this Act by either filing a declaration of in-*
25 *tent in accordance with paragraph (3) or by request-*

1 *ing an applicable percentage in accordance with*
 2 *paragraph (4).*

3 (6) *RESPONSE BY THE FUND.*—*The Fund shall*
 4 *respond not later than 150 days after the date of en-*
 5 *actment of this Act to an eligible person that has*
 6 *made such a request for an applicable percentage. The*
 7 *response from the Fund shall include the applicable*
 8 *percentage, calculated in accordance with section*
 9 *806(b). An eligible person receiving such response*
 10 *from the Fund shall file a declaration of intent with*
 11 *the Fund in accordance with paragraph (3) not later*
 12 *than 180 days after the date of enactment of this Act.*

13 (7) *MINIMUM PARTICIPATION LEVEL.*—

14 (A) *DETERMINATION.*—*Within 210 days*
 15 *after the date of enactment of this Act, the Fund*
 16 *shall determine—*

17 (i) *the number of eligible persons iden-*
 18 *tified on the lists submitted under para-*
 19 *graph (1), and the weighted average of such*
 20 *eligible persons, that have accepted partici-*
 21 *pation in the Fund; and*

22 (ii) *the number, and weighted average,*
 23 *of such eligible persons that have rejected*
 24 *participation in the Fund.*

1 *An eligible person that has not responded in ac-*
2 *cordance with paragraph (2) to an initial notifi-*
3 *cation or in accordance with paragraph (5) to a*
4 *renotification shall be deemed to have irrevocably*
5 *accepted participation in the Fund for the pur-*
6 *poses of this title. An eligible person that has*
7 *made an early acceptance or rejection pursuant*
8 *to section 807(b) shall be deemed to have accept-*
9 *ed or rejected, as the case may be, its applicable*
10 *percentage and shall submit the information re-*
11 *quired by paragraph (3) not later than 120 days*
12 *after the date of enactment of this Act.*

13 *(B) TERMINATION OF PROGRAM.—If more*
14 *than a weighted average of 20 percent of the eli-*
15 *gible persons identified on such list reject par-*
16 *ticipation in the Fund, the program under this*
17 *title and under the insurance fee provisions*
18 *added by title IX shall terminate, and any fees*
19 *paid by insurance companies under such provi-*
20 *sions that have not been utilized for administra-*
21 *tion of the Fund shall be refunded pro rata to*
22 *those companies.*

23 *(C) CONDITIONAL TERMINATION OF PRO-*
24 *GRAM.—*

1 (i) *IN GENERAL.*—*Except as provided*
2 *in clause (ii), if more than a weighted aver-*
3 *age of 15 percent but not more than a*
4 *weighted average of 20 percent of the eligi-*
5 *ble persons identified on such list reject par-*
6 *ticipation in the Fund, the program under*
7 *this title and under the insurance fee provi-*
8 *sions added by title IX shall terminate, and*
9 *any fees paid by insurance companies*
10 *under such provisions that have not been*
11 *utilized for administration of the Fund*
12 *shall be refunded pro rata to those compa-*
13 *nies.*

14 (ii) *DETERMINATION.*—*Such program*
15 *shall not terminate and such fees shall not*
16 *be refunded if, not later than 225 days after*
17 *the date of enactment of this Act, the Chair-*
18 *person of the Board, in consultation with*
19 *the other members of the Board, determines*
20 *that the weighted average of eligible persons*
21 *that have elected to accept participation in*
22 *the Fund is likely to substantially eliminate*
23 *the insurance coverage litigation between*
24 *insurance companies and eligible persons at*
25 *a cost that is fair to the companies subject*

1 to the fees imposed by provisions added by
2 title IX.

3 (8) *WEIGHTED AVERAGE.*—For purposes of this
4 subsection, the weighted average of eligible persons ac-
5 cepting, or rejecting, participation in the Fund shall
6 be determined by dividing—

7 (A) the product obtained by multiplying—

8 (i) the acceptances or rejections, as ap-
9 propriate, by eligible persons listed under
10 paragraph (1); by

11 (ii) the number of eligible National
12 Priorities List facilities of the eligible per-
13 sons accepting or rejecting, as appropriate,
14 such participation (without regard to
15 whether or not any such facility is the sub-
16 ject of a lawsuit or insurance claim); by

17 (B) the total number of eligible National
18 Priorities List facilities for all persons either ac-
19 cepting or rejecting such participation.

20 **SEC. 817. TERMINATION OF AUTHORITY TO OFFER AND AC-**
21 **CEPT RESOLUTION.**

22 (a) *AUTHORITY TO ACCEPT REQUEST FOR RESOLU-*
23 *TION.*—The authority of the Fund to accept requests for res-
24 olution shall terminate on the date that is 10 years after
25 the date of enactment of this Act.

1 (b) *AUTHORITY TO OFFER RESOLUTIONS.*—The au-
2 thority of the Fund to offer resolutions to eligible persons
3 shall terminate after the date that is 10 years and 180 days
4 after the date of enactment of this Act.

5 (c) *CONTINUING OBLIGATIONS.*—Until termination of
6 the Fund, the Fund shall continue to—

7 (1) *make payments pursuant to resolution offers*
8 *for any eligible facility that is identified at the time*
9 *of acceptance of the resolution offer or within 10*
10 *years after the date of enactment of this Act; or*

11 (2) *reimburse insurers with respect to litigation*
12 *commenced or continued in connection with a resolu-*
13 *tion offer made on or before the date that is 10 years*
14 *after the date of enactment of this Act, where the reso-*
15 *lution offer was rejected by an eligible person or not*
16 *acted upon by an eligible person.*

17 **SEC. 818. TERMINATION OF FUND.**

18 *If, during any 2-year calendar period commencing*
19 *after the date that is 10 years after the date of enactment*
20 *of this Act, no eligible person makes a claim to the Fund*
21 *for payment of eligible costs, the Fund shall terminate, and*
22 *all amounts remaining in the Fund shall be deposited in*
23 *the general fund of the Treasury.*

TITLE IX—TAXES**SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE
CODE OF 1986.**

(a) Section 59A(e)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking “January 1, 1996” and inserting instead “January 1, 2001”.

(b) Section 4611(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4611(e)) is amended—

(1) in paragraph (1) by striking “December 31, 1986” and inserting instead “December 31, 1995”;

(2) in paragraph (2)—

(A) by striking “December 31, 1993 or December 31, 1994” and inserting instead “December 31, 1998 or December 31, 1999”;

(B) by striking “December 31, of 1994 or 1995, respectively” and inserting instead “December 31 of 1999 or 2000, respectively”; and

(C) by striking “1994 or 1995” the last place it appears and inserting instead “1999 or 2000”;

(3) in paragraph (3)(A), by striking “January 1, 1987, and ending December 31, 1995” and inserting instead “January 1, 1996, and ending December 31, 2000”; and

1 (4) in paragraph (3)(B)—

2 (A) in the title thereof, by striking “Janu-
3 ary 1, 1996” and inserting “January 1, 2001”;
4 and

5 (B) by striking “Fund before January 1,
6 1996” and inserting instead “Fund before Jan-
7 uary 1, 2001”.

8 **SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON**
9 **INSURANCE COMPANIES.**

10 (a) IN GENERAL.—The Internal Revenue Code of
11 1986 is amended by inserting after section the follow-
12 ing new section:

13 **“SEC. . ENVIRONMENTAL FEES AND ASSESSMENTS ON IN-**
14 **SURANCE COMPANIES.**

15 **[RESERVED]”**

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for chapter of the Internal Revenue Code of 1986
18 is amended by inserting after the item relating to section
19 the following:

“Sec. . Environmental Fees and Assessments on Insurance
Companies.”.

20 **SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL IN-**
21 **SURANCE RESOLUTION FUND.**

22 (a) IN GENERAL.—

23 (1) Except as provided in section 802(f)(7) of
24 this Act, all expenditures of the Resolution Fund

1 shall be paid out of the fees and assessments im-
2 posed by section of the Internal Revenue Code.

3 (2) Except as may be expressly authorized by
4 the Secretary of the Treasury, all funds of the Reso-
5 lution Fund shall be maintained in the Treasury of
6 the United States. The Secretary may provide for
7 the disbursement of such funds to the Resolution
8 Fund or on behalf of the Resolution Fund under
9 such procedures, terms and conditions as the Sec-
10 retary may prescribe.

11 (b) TRANSFER TO RESOLUTION FUND.—The Sec-
12 retary of the Treasury shall transfer to the Resolution
13 Fund on October 1 of fiscal years 1995, 1996, 1997, 1998
14 and 1999, an amount equal to the fees and assessments
15 anticipated to be collected pursuant to section of the
16 Internal Revenue Code of 1986 during the then current
17 fiscal year.

18 (c) ADJUSTMENTS.—In each succeeding fiscal year
19 the Secretary of the Treasury shall adjust the amounts
20 transferred pursuant to paragraph (2) to reflect actual
21 collections of fees and assessments during the prior fiscal
22 year, except that with respect to the transfer made on Oc-
23 tober 1, 1999, the Resolution Fund shall reimburse the
24 Secretary the amount of such transfer subsequently deter-

1 mined by the Secretary to have exceeded actual collections
 2 of fees and assessments during such fiscal year.

3 **SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.**

4 The Resolution Fund, including its capital, reserves,
 5 surplus, security holdings, and income shall be exempt
 6 from all taxation now or hereafter imposed by the United
 7 States (including any territory, dependency or possession
 8 thereof) or any State, county, municipality or local taxing
 9 authority.

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11 S 1834 RCS1S—3

12 S 1834 RCS1S—4

13 S 1834 RCS1S—5

14 S 1834 RCS1S—6

15 S 1834 RCS1S—7

16 S 1834 RCS1S—8

17 S 1834 RCS1S—9

18 S 1834 RCS1S—10

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